

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

**ELAT 2138/22**

**In the matter of :**

**Oakdale Primary School, Central Flacq Ltd.**

**Appellant**

v/s

**The District Council of Flacq**

**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 the conversion of an existing concrete building at first floor to be used as primary school, at Ladybird Road, Central Flacq. Counsel for the Respondent, Me. Luttoo, raised an objection at the stage when the main witness for the Appellant, Mrs. Ramanah, was about to produce certain photographs and videos in the course of her examination in chief, which had already been communicated to Counsel prior to the sitting.
2. The objection of Me. Luttoo is essentially grounded under **s.181E of the Courts Act** [**'The Act'**] which pertains to the admissibility of statements produced by computers in civil cases and wherein a number of procedural requirements have to be adhered to and conditions imposed which have not been followed in the present case hence the photographs and videos recorded on the phone by Mrs. Ramanah cannot be produced.

3. We have duly considered all submissions. Me. Luttoo submitted that under **subsection (1) of s.181E of the Act** a computer is defined as any device for storing and processing information whether or not the information is derived from other information by calculation, comparison or otherwise. Therefore, the mobile phones used for recording video clips and taking photos, would qualify as a computer because it processes and stores information. She refers to subsection (3) and argues that there is no guarantee nor assurance that the specific conditions set out therein were respected as is required under subsection (4) except for the mere *ipse dixit* of the appellant's representative. After initially submitting that a certificate is required from Mrs. Ramana but in the form of a document, despite her viva voce evidence regarding the requirements of subsections (3) and (4) having been met, she later submitted that either the Director of the school or an IT Technician could certify as to its proper functioning; It would then be for the witness to put in the certificate demonstrating that the device is used regularly to store, process information and for recording of videos and photos for the purposes of satisfying all the requirements under the law.
4. Me. Ajodah, counsel appearing for the Appellant, resisted the motion and argued that the applicability of subsections (3) and (4) is essentially in cases where someone has been using a device, inputting data in a device, or has created or used a software in a device to obtain a certain result and a third party, not involved in that process, is using that data, or device or software to produce as evidence before a Court or Tribunal. In such cases the adjudicator must be comforted that it can rely on such evidence. He states that the law makes no mention of self-certification and that the photos and videos that Mrs. Ramanah intends to produce can be challenged either under cross-examination or by counsel for the Respondent putting question to the witness akin to a "*voir dire*" in civil matters.
5. Me. Bhugul, counsel holding a watching brief for witness Mr. Hemchandra Radha, submitted that since mention is made of "certificate", it will provide a certain degree of certainty and authenticity of the videos before the Tribunal relies on them.

6. Section 181E of the Courts Act is reproduced hereunder *in italics*:

***“181E. Admissibility of statements produced by computers in civil proceedings”***

(1) *In this section, “computer” means any device for storing and processing information, whether or not the information is derived from other information by calculation, comparison or otherwise.*

(2) *Where, over a period, the function of storing or processing information for the purpose of carrying an activity was regularly performed by—*

- (a) *a combination of computers;*
- (b) *different computers operating in succession;*
- (c) *different combinations of computers operating in succession;*
- (d) *the successive operation of one or more computers and one or more combinations of computers,*

*all the computers shall, for the purposes of this section, be treated as constituting a single computer.*

(3) *A statement contained in a document produced by a computer shall, subject to Rules of Court, be admissible in any civil proceedings as evidence of any fact stated therein of which direct oral evidence would be admissible where—*

- (a) *the document was produced during a period over which the computer was regularly used to store or process information for the purpose of any activity regularly carried on by a person over this period;*
- (b) *information of the kind contained in the statement, or of the kind from which the information is derived, was regularly supplied to the computer over that period in the ordinary course of that activity;*
- (c) *the computer was operating properly during the material part of that period; and*
- (d) *the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of that activity.*

(4) *Where a party wishes to give in evidence a statement under subsection (3), a certificate which—*

- (a) *identifies the document containing the statement and describes the manner in which it was produced;*
- (b) *gives particulars of any device involved in the production of the document to show that it was produced by a computer;*
- (c) *deals with any matter referred to in paragraph (a), (b), (c) or (d) of subsection (3); and*
- (d) *purports to be signed by a person occupying a responsible position in relation to the operation of the relevant device or to the management of the relevant activity,*

*shall be evidence of any matter stated in the certificate.*

(5) *For the purposes of subsection (4), it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.*" [underlining is ours]

7. We believe that a simple reading of the section as well as its title, gives a clear indication that this section deals with the admissibility of "statements" produced by computers and these statements being obviously contained in documents can be produced without the maker of the documents being called. Although agreeably a mobile phone falls within the meaning of a computer as per the definition provided in this section, we find that the objection raised by the Respondent's counsel to be misconceived for several reasons. Firstly, there is no statement that is being produced in the present case. The issue at hand is one of admissibility of photos and video clips recorded on the mobile phone. Photos and video recordings are real evidence not dissimilar from photographs, maps, plans are normally produced before the Tribunal- they are not "statements". If of relevance and probative value, these can be admitted so that the court or tribunal can get a sense of, make observations and draw conclusions.
  
8. Secondly, in our view especially as can be gauged upon perusal of **subsection (3)**, this section applies as an exception to the Hearsay rule without the maker of the documents being called. **Subsection (4)**, as rightly pointed out by Counsel for the Appellant, is there to provide the comfort that the quality of the evidence has not been tainted. But in the present case, the maker of these photos and videos, Mrs. Ramanah, is available. In fact, she has offered explanations regarding the proper functioning of her phones and details of her usage of both phones and she is the one who is being called to produce the evidence. Thus, Counsel for the Respondent objecting to the maker of the videos and photos to produce such evidence on the basis of **s.181E of the Act** is clearly misconceived, in our view. In **Sun Limited v ABKID(Mauritius) Limited [2021] SCJ 409**, the Defendant objected to the production of emails which a witness of the Plaintiff sought to produce, having received them personally. The Learned Judge, overruling the objection, found that emails did not amount to computer generated documents and made the following observation:

*“Section 181E (3) specifically refers to a statement contained in a document produced by a computer. It is clear from a reading of section 181F that documents which fall within its purview are those which are **produced by a computer**, where the computer was regularly **used to store or process information for the purpose of any activity** regularly carried on by a person. Further, for section 181E to come into play, the **information contained in the statement must have been regularly supplied to the computer over that period in the ordinary course of that activity**. It is amply clear from a reading of section 181E that it concerns computer generated documents. Subsections (3) and (4) of section 181E in fact set out four conditions which need to be satisfied for the statement contained in such computer generated document to be admissible without the maker thereof being called.”*

9. We are therefore fortified in our view that **section 181E** applies to computer generated **statements** where the computer is used regularly to store or process information of an activity which is carried out by a person, which is not the case here. In addition, the hearsay rule does not apply to real evidence, hence the non-applicability of this section.
  
10. For all the reasons set out above, we find that photos and video recordings which the representative of the Appellant seeks to produce do not fall within the purview of **s.181E of the Courts Act**. The objection is overruled. The case is to proceed.

Ruling delivered on 3<sup>rd</sup> August 2023 by

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

**Mr. R. ACHEEMOOTOO**  
Member

**Mr. S. BUSGEETH**  
Member

