

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 2165/23

In the matter of:

**Regional Spiritual Assembly of the Baha'is of Mauritius
duly represented by Mr. Madhusuddan Appadoo**

Appellant

v.

The District Council of Pamplemousses

Respondent

Ruling

The present ruling is given in the course of the formal stage of the proceedings.

The Appellant has objected to the filing of a statement of defence by the Respondent on the ground that it is being filed outside delay.

The chronology of this case is as follows:

The appeal was lodged on the 20th April 2023 and made returnable on the 16th May 2023. On that date, the Respondent left default and the Tribunal fixed the matter for filing of the Statement of Defence (SOD) on the 23rd May 2023.

On the 23rd May, the Respondent failed to file the SOD. It is to be noted that the filing of respective statements by parties is done by email, as has been the cursum followed by the Tribunal over the past three years. The Tribunal granted a further delay for the SOD to be filed on the 6th June 2023.

ON 29th May 2023, the Attorney for the Appellant sent an email to the Tribunal moving for a determination in terms of the appeal lodged. The Tribunal fixed the matter for 'SOD or Make-Out' on the 6th June 2023.

On the 6th June 2023, the Respondent was represented by counsel who moved to file the SOD. Counsel for the Appellant objected to the filing of the SOD and produced the return of service of the notice to attend Tribunal served on the Respondent as well as the certificate of service showing good service on the Respondent. Given that the Respondent has failed to file its statement of defence within the 21 days of receipt of the statement of case of the appellant, as provided by section 5(4) (ad) of the Environment and Land Use Appeal Tribunal Act, counsel for the Appellant moved that the matter proceeds as undefended.

I have considered the submissions made by counsel for the respective parties.

It has been submitted on behalf of the Respondent that the matter had already been ruled upon by the Tribunal on the 30th May when it fixed the matter for 'SOD or Make-Out', thus giving two options, namely for the Respondent to file the SOD or, if it left default, the matter would be taken for 'make-out'. The fact that the Respondent is now represented, and ready to file the SOD, it is acting in accordance with the order already given by the Tribunal.

Indeed, the Respondent has been given, by order of the Tribunal dated 30th May, the option to file the SOD or, in the alternative, the matter will be heard as a 'make-out' in the absence of the Respondent. Since the Respondent is now present and represented and the SOD is ready to be filed, the matter cannot proceed as 'undefended' as per the motion of counsel.

On the other hand, the Appellant relied on section 5(4) (ad) to stress the fact that the SOD ought to have been filed by the Respondent within 21 days of the receipt of the notice of appeal and statement of case. This Tribunal has made several pronouncements on this issue, wherein it has highlighted that the statutory delay to lodge the appeal before the Tribunal is mandatory, but as regards the filing of replies by respective parties, it has been the *cursus* for the Tribunal to grant an extension of time, if it is found necessary. This is in accordance with the powers that the Tribunal has to conduct its proceedings with as little formality and technicality as possible, as provided by section 5(3)(c) of the Environment and Land Use Appeal Tribunal Act.

The decision to fix the matter for SOD, or in the alternative, to proceed with the make-out is based on this approach. Besides, the mere fact that the Respondent put up an appearance on the day of the 'make-out' is ground enough to consider the motion of the party to put in his defence. In addition, the Appellant has not shown what prejudice is likely to be caused in the conduct of his case if the SOD is filed at this stage.

This Tribunal finds that the matter can proceed with the respective versions of both parties having been filed.

The objection raised by the Appellant is not sustained. The Respondent is allowed to file its SOD at this stage.

Delivered on 5th July 2023 by:

Mrs. V. Phoolchund-Bhadain
Chairperson