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

**ELAT 2196/23**

**In the matter of:-**

**AKGM Co Ltd.**

Appellant

v/s

**The Municipal Council of Beau Bassin/Rose Hill**

Respondent

**RULING**

1. The present appeal is against a decision taken by the Council for having refused the granting of a Building and Land Use Permit ["BLUP"] to the Appellant for the proposed conversion of an existing building to operate as a Dormitory at 9, Nazia Lane (off Royal Road), Coromandel.

2. The reasons for refusal given by Permits and Business Monitoring Committee of the Respondent communicated to the Appellant, as per Annexure 1 of the Statement of Case, are that the development is not in accordance with the **Planning and Development Act** for the reasons reproduced below in italics:
    1. *The access leading to the site is substandard for two vehicles to cross.*
    2. *The site is located in a 'cul de sac' and in the event of a fire outbreak, rescue services will face many difficulties to attend to the site.*
    3. *The lodging of 44 inmates will be detrimental to the harmony of the small locality.*

4. *The proposed development will not fit in the actual context of the residential area.*
5. *Collection of solid waste will not be possible due to the narrow road.*
6. *Strong objections have been received from the neighbours.*

3. In the light of the reasons advanced by the Respondent, the Appellant filed its Notice of Appeal and Statement of Case [S.O.C] setting out its grounds of appeal precisely, in reply to every ground of refusal and expatiating on every ground of appeal. It is noted that each ground of appeal addresses one ground of refusal.

4. In the course of the examination in chief of the representative of the Respondent, Mr. Nawoor, Counsel appearing for the Appellant intervenes at first, then raises an objection to the evidence of the witness. The transcript of the record is reproduced hereunder:

*"Q. Alright. Following an application made by the applicant for a BLUP, the Council has refused the application based on the following reasons.*
*A: Yes Chairperson.*

*Q. First is that the access leading to the site is substandard to two vehicles to cross. Can you expatiate on this ground?"*

The Appellant's counsel at this stage intervenes to state that the evidence as being elicited by the witness should not be allowed and states the reasons for saying so. He is then invited to raise a formal objection.

5. The objection, in essence, is grounded on the fact that paragraph 8 of the Statement of Defence [S.O.D] amounts to a bare denial of the grounds of appeal because it is couched in a way that does not make any positive averment but simply denies all the grounds of appeal *in toto*. The motion of Me. Bacorisen, Counsel appearing for the Appellant, is two-fold:

(1) The Respondent does not have any case to answer in relation to grounds 1 to 6 and partially ground 7 as covered under paragraphs 12 to 21 of the Statement of Case.

(2) Alternatively, the Tribunal should not allow any evidence in rebuttal to these grounds of appeal because to do at this stage would be prejudicial to the Appellant's case.

6. We have duly considered the submissions of both Counsel. Both limbs of the objection will be considered together. Learned counsel for the Appellant argued that the S.O.D contained a bare denial of the grounds of appeal and that no positive averment was made in rebuttal. In essence, every element of each ground of appeal as set out in the S.O.C was not addressed by any positive averment in defence save for a statement denying the grounds of appeal generally- lumped into one sentence, which the Appellant's counsel submits, does not answer the case put forward by the Appellant. He further submits that the Appellant's case is closed and therefore the Appellant will not be able to "catch up" on the evidence being adduced by the Respondent if allowed to proceed the more so as the latter did not deem it fit to rebut the averments of the Appellant. Me. Appaya, Counsel for the Respondent, submits that the representative of the Appellant has already given evidence on the issues and been cross-examined, now it is for the Respondent to put forward and prove its case on the issues on which the Appellant has already been cross-examined.

7. A perusal of the S.O.D shows that paragraph 8 is couched as, "8. The respondent denies paragraphs 12-21 of the S.O.C" and indeed no positive averments are made thereafter save at the last paragraph, which states, "Respondent avers that is has determined the application of appellant in accordance with Section 117 of the Local Government Act 2011 (amended) and refused it on fair and reasonable grounds and accordingly moves that the present appeal be set aside."

8. There being no rules specifically addressing this issue under the **Environment and Land Use Appeal Tribunal Rules 2021** proclaimed in **GN 258 of 2021**, nor under our local laws

save for **Rule 13 of the Supreme Court Rules** which gives broad provisions on the content of pleadings, we turn to the English rules of civil procedure. Under the **English Civil Procedure Rules (CPR)**, as interpreted and elaborated in the **White Book**, a general denial of averments in a statement of defence is generally **not permitted**. The **CPR** emphasizes that a statement of case must address the specific issues in dispute clearly and precisely. The content of a defence statement as set out under **Rule 16.5 (1), (2) and (3)** of the **CPR** (of relevance here) are broadly that the defendant must state which of the allegations in the particulars of the claim he denies; which ones he is unable to admit or deny but requires the claimant to prove; and which allegations he admits. Where the defendant denies an allegation, he must state the reasons for doing so and, if he intends to put forward a different version of events from that given by the claimant, he must state his own version. A defendant who fails to deal with an allegation but has set out in his defence the nature of his case in relation to the issue to which that allegation is relevant, will be required to prove the allegation. Finally, a defendant who fails to deal with an allegation is taken to admit that allegation.

9. Therefore, the key principles regarding denials in Defence Statements under **Rule 16.5 of the CPR** is that the defendant must provide a comprehensive response by explicitly stating which allegations in the particulars of claim they **deny,** which they **admit**, and which they cannot admit or deny (and require proof of). Hence, a general denial of all allegations in the particulars of claim is not sufficient because denials must be explicit. There is a requirement for specificity which is met when each allegation is denied- the defendant must give reasons for the denial and, where possible, provide an alternative version of events, if applicable as per the provisions of the **CPR**.

10. In the present case, we note at paragraphs 4, 5 and 6 of the S.O.D several averments have been made in rebuttal of other averments contained in the Statement of Case but as far as the grounds of appeal are concerned, the Respondent has made a one-liner averment that the paragraphs relating thereto are denied.

11. As a general rule, this practice is not condoned, and should be refrained from, as it restricts the party from traveling beyond its pleadings when adducing evidence and defeats the requirement of specificity, a vital element in the adjudication process to avoid adverse inferences or deemed admissions.

12. However, in the present case, we are to look at the context coupled with the provisions of the law. A bare denial without reasons or context will not satisfy the requirements of **CPR 16.5(2)** unless-as stated above-a defendant who fails to deal with an allegation but has set out in his defence the nature of his case (in relation to which that allegation is relevant) will be required to prove the allegation. The nature of the case is known since the Appellant knew what case was to be met and has addressed it. At paragraph 2 above, the grounds of refusal as communicated to the Appellant have been reproduced. It is noted that these grounds are explicitly set out with clear particulars of the Act breached. The first ground of refusal addresses access, the second and fifth grounds are on accessibility, the third and fourth grounds are on the impact on the surrounding area, and the sixth ground pertains to the objections received. The grounds of refusal are so clearly couched that there can be no confusion as to the case of the Respondent.

13. The Respondent has filed a S.O.D, and at the hearing, a representative was present at the Tribunal to defend the case of the Respondent. These clearly demonstrate the intention of the Respondent to defend its case and support its decision for refusal. It would defeat the purpose of the **Environment and Land Use Appeal Tribunal Act 2012** ["**ELUAT Act**"] if this Tribunal were to be overly technical in analyzing the pleadings of the Respondent to mean that they are not challenging the averments of the S.O.C. The fact remains that the Appellant was not taken by surprise. The Respondent's legal representative cross-examined the Appellant on the version of the Respondent as set out in its grounds of refusal, and the record shows that the Appellant's representative was able to testify, as the evidence related to the Appellant's version and the grounds of refusal. Therefore, we do not find there to be any prejudice caused to the Appellant's case.

14. On the contrary, if the Respondent is not allowed to adduce evidence to substantiate its grounds of refusal, this will be prejudicial to the Respondent's case and in breach of **CPR 16.5(2),** since the nature of the Respondent's case in relation to the issue is clear, albeit the averments are simply denied. Hence, it will be incumbent on the Respondent to substantiate the allegations. Furthermore, the Appellant was well aware of the case to be met and where it stands. Finally, if the evidence is not allowed, it may impede the Tribunal's ability to make an assessment of the evidence in the adjudication process and to reach an informed decision.

15. In line with the principle of natural justice, the Tribunal is duty bound to give the opportunity to the Respondent to put forward its case and adduce the relevant evidence to substantiate its grounds of refusal because *ab initio* the Appellant knew where it stood which was how it was capable of drafting its grounds of appeal precisely and concisely, in compliance with the **ELUAT Act**, addressing every element elicited in the grounds of refusal and we note that there was no grievance by the Appellant that the grounds of refusal were in that respect unclear. It is also noted that the Appellant chose not to reply to the S.O.D of the Respondent where it could have had the opportunity to raise this issue as a point in law right at the outset but chose to do so at a late stage when the representative of the respondent was already testifying.

16. For all the reasons stated above, the objection raised is overruled. However, to ensure fairness and prevent any prejudice to either party, we will, as an exception, allow the Appellant an opportunity to address any part of the Respondent's case that they were not aware of or had no prior notice of. This will be done by permitting the Appellant to re-open its case, but only for that specific purpose and only upon good cause shown. The case is to proceed on its merits.

Ruling delivered on 28th January 2025 by

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| **Mrs. J. RAMFUL** | **Mr. I. M. SUFFEE** | **Mr. A. SOOGALI** |
| **Vice Chairperson** | **Member** | **Member** |