

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 382/13

In the matter of:

Roland Haus Co. Ltd

Appellant

v/s

Minister of Environment and Sustainable Development

Respondent

IPO:

- 1. Globe Prism Ltd**
- 2. The Permanent Secretary, Ministry of Housing and Lands**
- 3. District Council of Riviere du Rempart**

Co-Respondents

RULING

1. The proceedings have reached a stage where Counsel appearing for Co-respondent no.1 has started cross-examining the expert witness for the Appellant, Mr. Foondun, Planner. With a view to impugning the credibility of the witness, counsel put questions relating to charges of corruption faced by the witness while he held office at a local authority at which point the Appellant's Counsel raised an objection. The essence of the objection raised was that the line of questioning adopted by Counsel for the co-respondent no.1 pertaining to why Mr. Foondun left his previous employment was irrelevant to the

competence of the witness and was designed to destabilize the witness. Counsel also stated that the matter was sub-judice and currently subject to appeal.

2. We have duly considered the arguments on both sides, the other parties having elected to abide by decision of the Tribunal. Counsel for the Co-respondent no.1 argued that the credibility of the witness is of prime importance in determining whether the testimony as an expert can be relied upon and to what extent. The relevant extract of the proceedings is reproduced:

“ Q: *And then you left the service, that’s correct?*

A: *I was, that’s correct.*

Q: *And we are correct to say that there have been charges leveled against you for corruption?*

A: *Absolutely, there are charges.*

Q: *And will it be also correct in my-*

Mrs Saha: I object to this line of cross-examination...”

3. **Blackstones’ Civil Practice 2000** on the rule on finality on collateral matters sets out *“The general rule at common law is that the answers given by a witness under cross-examination to questions on collateral issues, that is issues which are not directly relevant to the facts in issues in the case must be treated as final, not in the sense that the tribunal of fact must accept the truth of the answers, but in the sense that the cross-examining party should not be allowed to call further evidence with a view to contradicting the witness.”* Questions which go to the credit of the witness are indeed collateral because they are not *per se* relevant to the facts in issue. However, there are exceptions to the general rule, all of which are geared to the unreliability of the witness such as *“in the case of previous convictions of a witness, his or her bias, a physical or mental disability affecting his or her reliability, and his or her reputation for untruthfulness”*.

4. In the U.K, a witness may be questioned as to whether he has been convicted and if he refuses to answer or denies any convictions, it is open to the cross-examining party to prove such conviction. Infact, evidence of the conviction may be admitted not only if it is relevant to the case but if it is relevant to credit but the judge should weigh its relevance against its prejudicial effect. Such evidence will be admissible if the judge is satisfied that otherwise the parties would not have a fair trial or that the witness's credit could not be fairly assessed.
5. In the present situation, the witness has answered to questions put to him regarding charges of corruption leveled against him while he was employed at the local authority. He is in the witness box testifying in his professional capacity as a planner and the questions put in cross-examination relate to his professional conduct. We are therefore of the view that questions can be put to the witness about any alleged discreditable act which relate to his professional conduct, including any relevant previous convictions, since they are relevant. Any evidence of dishonesty is relevant not to the issue of admissibility of his evidence as a planner but to the weight to be attached to his testimony which can only be determined once all evidence has been heard
6. The matter is not sub-judice because we are not here discussing the merits of Mr. Foondun's case or the contents of the charges. It is an established rule that anyone who testifies in a proceeding is open to cross-examination on his character and so far as credibility is concerned, in civil proceedings if a witness has previous convictions at the time that he is testifying, these may be put to the witness in cross-examination. Whether these convictions are being contested or not is a different matter. Afterall, , the outcome of any contested case may take a number of years.
7. The extent of cross-examination as to the character of a witness is subject to the judge's discretion. In the case of **Hobbs v Tinling [1929] 2KB 1 at Page 51**, Sankey LJ disallowed

questions as to credit in cross-examination on the principles which were derived from the **Indian Evidence Act of 1872** that:

“

- (1) *Such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the court as to the credibility of the witness on the matter to which he testifies.*
- (2) *Such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the court as to the credibility of the witness on the matter as to which he testifies.*
- (3) *Such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence”*

8. In the present instance we believe that it would be proper to allow counsel to put questions relating to any discreditable act committed by the witness in his professional conduct since the witness is testifying in a professional capacity with a view to assisting the Tribunal to dispense justice. In **R v Sweet-Escott [1971] 55 Cr App R 316**, it was held that *“Since the purpose of cross-examination as to credit is to show that the witness ought not to be believed on his oath, the matters about which he is questioned must relate to his likely standing after cross-examination with the tribunal which is trying him or listening to his evidence.”* We therefore find that Counsel for the co-respondent no.1 is perfectly entitled to cross-examine the witness as to his character provided that it is related to his credibility and is connected with or will have a bearing on the present case.

Ruling delivered on 22nd June 2017 by

Mrs. J. RAMFUL-JHOWRY
Vice Chairperson

Dr. B. MOTAH
Member

Mr. M. BUSAWON
Member