IN THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 888/15

In the matter of:

1. **Maneelah RAMDANY**
2. **Ghanshyamjee Soondar RAMDANY**
3. **Bhooshini Rajkumaree RAMDANY**
4. **Tri Netr Nath RAMDANY**

Appellants

v/s

THE DISTRICT COUNCIL OF MOKA

Respondent

IPO:

MAHANAGAR TELEPHONE (MAURITIUS) LTD

Co-Respondent

RULING

1. The present appeal is against the decision of the respondent (the "Council") for having granted a Building and Land Use Permit ("BLUP") to the co-respondent ("MTML") for the installation of a Telecommunication Tower of a height of 35 metres at Coorperative Lane, Camp Thorel, St Julien d'Hotman. The appellants are objectors to the application. The matter is yet to be heard on the merits. Counsel appearing for the co-respondent,

the MTML, raised a preliminary objection in two parts. The first limb is that this Tribunal has no jurisdiction to hear the present matter; and the second limb is that the Minister of Local Government and Outer Islands, who is the decision-maker, has not been put into cause within the statutory time frame and therefore the matter cannot proceed. The motion was resisted by the appellants and the respondent did not agree with the first limb of the motion but with regard to the second limb, counsel appearing for the respondent agreed that the Minister had to be joined as a party but the fact that he was not joined within the statutory time frame is not fatal.

2. We have duly considered all submissions of counsel appearing for the parties. We do not intend to overburden this ruling with the submissions of counsel except where we deem it fit to do so. It is also to be noted that there have been amendments made in 2016 to some of the sections of the law that have been referred to but this ruling looks at the state of the law as it stood at the time that the present application was made before, and determined by, the Council. In essence, the appellants objected to the application of the co-respondent for the BLUP and after having heard the objections of the appellants, the executive committee decided to reject the application. However, when the matter was referred to the Minister of Local Government and Outer Islands pursuant to **s.117 (12) of the Local Government Act 2011 ['LGA']** the Minister granted the permit. Having obtained the BLUP, the co-respondent initiated works on the site.

3. It is worthy of note that ex-facie the statement of case of the appellants, at paragraph 4, the appellants aver that it was the Minister of Local Government and Outer Islands who took the decision. Indeed, the record contains a letter under the signature of Mr. Ramanjooloo, supervising officer at the District Council of Moka and addressed to the PS of the Ministry of Local Government and Outer Islands and dated 04 September 2014, stating that the application is being referred to the Minister for his determination by virtue of the legal provisions of **section 117 (12) of the Local Government Act 2011**. The record also bears evidence of a letter dated 08 October 2014 emanating from the Ministry of Local Government and Outer Islands under the signature of A.K.Parayag acting for the Permanent Secretary of the relevant Ministry addressed to the supervising officer of the District Council of Moka stating that the Minister has approved the application for BLUP for the proposed development.

4. The Council in fact forwarded the application to the Minister so that by virtue of the powers vested upon him under **section 117 (12) (a) LGA**, in the event that a decision or recommendation made by the Permits and Business Monitoring Committee is rejected by the Executive Committee, the Minister makes a determination. The power to appeal under this Act, by those aggrieved is set out under **section 117(14) of the LGA** which states "*Any person aggrieved by a decision of a Municipal City Council, Municipal Town Council or District Council under subsections (7)(b), (8)(b) or (12) may, within 21 days of receipt of the notification, appeal to the Environment and Land Use Appeal Tribunal established under section 3(1) of the Environment and Land Use Appeal Tribunal Act 2012.*" The provision of the law is very clear and we cannot read more into the law than

what has been clearly provided. It is not so much that the Tribunal is reviewing the discretionary power of the Minister but it is mandated by law to decide whether the decision reached by the Minister was right or wrong.

5. A distinction is to be made between a review of the powers of the minister and deciding whether the final determination or decision or conclusion of the minister was correct or not. If it was not, then the Tribunal has the power to hear the case and make a proper finding as to what the decision should be, whether the granting of a BLUP is warranted or not. We therefore reject the first limb of the motion.

6. The second motion of the co-respondent is that the matter cannot proceed as an interested party which is the decision-making body itself, namely the Minister of Local Government and Outer Islands, has not been put into cause within the prescribed period. He referred to the authorities of **Lagesse v/s Town and Country Planning Board & Ors (2000)SCJ 235** and **Nuckcheddy & Ors v/s Town and Country Planning Board & Ors (2012)SCJ 152**. The appellant's counsel argued that, the Council is the sole authority empowered to grant a BLUP under **s.7 (2) Town and Country Planning Act 1954** to presumably support the appellant's contention that the correct party had been put into cause as respondent. We are of the view that the pieces of legislation, such as the **Town and Country Planning Act, the Local Government Act, the Planning and Development Act** must all be read in conjunction where required, to make better sense of the law and the intention of the legislator. It cannot be denied that by an Act of Parliament it was intended that the Minister of Local Government and Outer Islands must make a

determination under **s.117 (12)(a) LGA**, where a matter has been referred to him. Hence, it cannot be denied that he has an interest in the matter, since the decision to grant a BLUP to the co-respondent was taken by the Minister.

7. We believe that the Minister, being the decision-maker in this particular instance, not simply the authority who delivered the BLUP, was, at all material times, an interested party in this appeal; this appeal should have been brought to the notice of the Minister, since it is ultimately his decision that is being challenged by the Appellant. All interested parties need to take cognizance of the outcome of an appeal. It is worthy of taking note that while out of procedural fairness an interested party be joined as a party in whose presence the appeal be heard, non joinder of such a party as co-respondent cannot outrightly result in the appeal being set aside. In **The Public Service Commission v/s The Public Bodies Appeal Tribunal IPO Man Lan Wong Chow Ming (2011) SCJ 382**, the Supreme Court decided that the appeal be remitted back to the PBAT to be heard anew with an order directing the PBAT to allow an interested party be joined as a party.

8. Learned Counsel for the co-respondent's contention was that the decision-making body should have been put into cause within the statutory time frame. We refer to the case of **Lagesse** *supra* where their Lordships explained that the rationale behind the statutory time frame and stated *"the finality of decisions, whether judicial or quasi-judicial, should be certain and the aim of procedural requirements is to avoid uncertainty and delay in the execution of the decisions."* In that case, the law was silent as to whether an

appellant should notify the other party (the local authority) that he was appealing against its decision. The court found that *"It is now trite law that an appellate body cannot take a decision without hearing the parties under the 'audi alteram partem' rule and has to comply with the rules of natural justice. The Board [TCPB] has a duty to hear both parties to the appeal."* The Tribunal subscribes to this view.

9. Under **S. 5 (4) (a) of the Environment and Land Use Appeal Tribunal Act 2012 ['ELAT Act'],** as the law stood at the time that this appeal was lodged before the Tribunal, *"Every appeal under section 4(1) shall, subject to paragraph (b), be brought before the Tribunal by depositing, with the Secretary, a notice of appeal in the form set out in the Schedule, setting out the grounds of appeal concisely and precisely, not later than 21 days from the date of the decision under reference being notified to the party wishing to appeal."* The law, **s. 5 (4) of ELAT Act and s.117 (14) LGA**, simply imposed on the appellant a time frame of 21 days to notify the Tribunal. There was no legal requirement upon an appellant to notify within any time limit. This used to be done by the Tribunal itself. However, we are of the view that the appellants had a duty to ensure that the interested parties were put into cause in the course of the formal matters, the moreso as the appellants knew and averred so at paragraph 4 of their statement of case that the Minister approved the BLUP. It cannot be the duty of the Tribunal.

10. We are alive to the fact that the **ELAT Act 2012** provides that this Tribunal is to function with less formality and technicality than the courts. In that context we have analysed the contention of learned Counsel for the respondent that no prejudice has been caused

as the case has not yet started. This Tribunal is of a similar view namely that since evidence has not been heard, no prejudice would be caused to the respondent and co-respondent by joining other parties at this stage.

11. For all the reasons set out above, the motion is set aside. The matter will be called pro-forma.

Ruling delivered on 15th December 2017 by

Mrs. J. RAMFUL	**Mr. B. Rajee**	**Me. R. Seetohul**
Vice Chairperson	**Assessor**	**Assessor**