

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

Cause No. : ELAT 1009/15

In the matter of:

MR. ANDREW TSE EN HAU

Appellant

v.

DISTRICT COUNCIL OF BLACK RIVER

Respondent

RULING

A preliminary point in law has been raised by the Respondent, which is to the effect that the appeal has been lodged outside the prescribed delay of 21 days provided by section 5(4) of the Environment and Land Use Appeal Tribunal Act 2012. The Appellant has resisted the preliminary objection.

The notice of appeal lodged by the Appellant indicates that he was notified of the decision of the Respondent on the 28th September 2015. He then lodged his appeal on the 19th October 2015. The Respondent's contention is that the delay to appeal had lapsed on the 21st day after the notification date, namely on the 18th October 2015, the appeal should therefore not be entertained. We have considered the submissions made by counsel for the respective parties.

The relevant provisions for the purpose of this argument are firstly, Section 38(1) (a) of the Interpretation and General Clauses Act 1974 (IGCA) which provides that "*In computing time for the purposes of any enactment or document, where the time limited for the doing of an act expires or falls on a Saturday or a public holiday, the act may be done on the following day that is not a public holiday*". Secondly, the First Schedule under Section 3 (1) of the Public Holidays Act 1968, which lists Sundays as a public holiday.

By computation of the 21 days from the 28th September 2015, the prescribed delay indeed expired on the 18th October 2015. However, we take judicial notice of the fact that the 18th October 2015 was a Sunday, thus a public holiday within the definition of Section 3 (1) of the Public Holidays Act 1968. By application of section 38(1)(a) IGCA coupled with the First schedule to the Public Holidays Act, the prescription of the delay could only be on the following day that was not a public holiday, i.e. the 19th October 2015. The notice of appeal was lodged on this date. As such, the appeal has been lodged within the prescribed delay.

The preliminary point in law raised by the Respondent does not hold and is set aside. The appeal may proceed on its merits.

Delivered by:

Mrs. Vedalini Bhadain, Chairperson

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Mr. Pravin Manna, Assessor

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Miss. Roovisha Seetohul, Assessor

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Date:

8th June 2017