

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

**Cause No. : ELAT/1323/17**

**In the matter of:**

**DOMAINE LA VANILLE LTEE.**

**(Represented by Mr. Hemand Jhugroo)**

**Appellant**

**v.**

**MUNICIPAL COUNCIL OF VACOAS- PHOENIX**

**Respondent**

**In the presence of:**

**MRS. NADIA HILAIRE & OTHERS**

**Co-Respondents**

**RULING**

The Appellant has raised objection to the Co-Respondents filing of their statement of case on the ground that they would be doing so outside the statutory delay as provided by section 5(3)(a)(d) of the ELUAT Act, as amended. It has been submitted on behalf of the Appellant that the drafting of the abovementioned amendment is in mandatory terms, as such no reply or comment can be filed beyond the 21 days following service of the relevant documents on the party concerned.

A perusal of the record shows that on the 24 January 2018, the Co-Respondents have been put into cause by the Appellant by an amended Statement of Case filed on 27 November 2017. Attorney appearing for the Co-Respondents explained that there had been a confusion, as she was instructed by some of the Co-Respondents and not all of them, as stated in her earlier motion. She therefore moved for some time to file the SOD in respect of those C-Respondents for whom she was appearing. The Appellant did not

object then, but raised his objection by way of letter dated 7 February 2018, where emphasis was laid on the fact that the objection was being made to any SOD be filed outside the delay of 21 days. It is to be noted that in the course of this process, seven Co-Respondents have moved to withdraw from the present appeal.

This is clearly a case where there have been objectors to the proposed development and, upon attention being drawn by the Tribunal, the Appellant put the objectors into cause as they had an interest in the matter. It is noteworthy that the Respondent did not object to the filing of the SOD by the Co-Respondent. In fact Counsel for the Respondent made a statement to the effect that *"The strong objections as raised by the Co-Respondents form a fundamental aspect of the Respondent's case and we will not object to the SOD being filed"*.

The Appellant submitted in favour of a strict adherence to section 5 of the Environment and Land Use Appeal Tribunal Act, as amended, which provides that *"Any party served with a copy of the Notice of appeal, statement of case and witness statement shall within 21 days of receipt thereof forward his reply and comments thereon to the Tribunal with copy to the appellant."*

This Tribunal has made pronouncements on the approach that it has adopted on the issue of delay, namely by holding that the provisions of the ELUAT Act as regards delay are directory and not mandatory. The following extract from a ruling given the case of **AHRIM v. Ministry of Social Security, National Solidarity and Environment and Sustainable Development & Anor. IPO Growfish International (Mauritius) Ltd. & Ors ELAT/1502/17** is reproduced below and indicates the position of the Tribunal on the matter:

*"It is our view that despite the drafting of section 5(4)(ad) in mandatory terms this Tribunal has a discretionary power on the matter for the following reasons:*

*The Legislator chose to maintain in the ELUAT Act all the other provisions which propound an overall conciliatory approach, namely in section 5((3)(b) which provides that 'Any proceedings before the Tribunal shall be conducted with as little formality and technicality as possible', and section 5(3)(c) which is to the effect that 'Any proceedings before the Tribunal shall not preclude an endeavour by the Tribunal to effect an amicable settlement between the parties'.*

*There is no specific provision prohibiting the exercise of a discretion (as in some cases where it is expressly provided for by the Legislator, for example in *Essar Steel Ltd v. Arcelor Mittal USA LLC 2017 SCJ 357* where discretion has been expressly excluded by the Legislator in section 181(3) of the Insolvency Act.) In the present matter, rigidity in the application of the delay, not for the lodging of the appeal, but in providing their reply/comments to an appeal already*

*lodged would be a departure from the other above-mentioned provisions of the ELUAT Act. We take the view that the section 5(4)(ad) can be read as a directory provision, to be consistent with the spirit of the enactment.”*

Furthermore, the Tribunal has also expressed that:

*“It is our concerned view that a refusal to grant the motion for extension of time will amount to hearing an appeal without any ‘defence’ being put forward by the Respondents and Co-Respondents. This would result to an injustice being done by the non filing of the defence (Re- Perrine & Ors. v. Foogooa & Ors. 1967 MR 134, where, if the Respondents’ motion were granted, the petitioners would forfeit their right to have their petition heard by the Court and Re-Beekoo v. Bussier 1950 MR 13, where the Supreme Court allowed a departure from Rule 6 of the Supreme Court (in relation to delay in an application for Rule nisi) on the ground that “...to refuse this application might have the result of subjecting the applicant to such injustice as might amount to oppression).”*

We reiterate this position in the present case. The stand adopted by the Respondent (by not objecting to the SOD of the Co-Respondents being filed outside delay) is in line with the abovementioned position of the Tribunal. We also refer to the observations made in the decision of the Supreme Court in **Gwenaelle Anne Marie Saindrenan and anor v. Swan Insurance Co. Ltd. & anor 2007 SCJ 255** where the learned Judge stated that:

*“After mature consideration, I am of the view that rules of Court which are concerned with procedure as opposed to substantial rights, are in essence directory. This does not mean that they can be disregarded with impunity but only means that, whilst failure to observe them will usually be sanctioned, the Court retains a discretion, in the interests of justice, to condone such failure.” (The Court also referred to the established principle in the case of Quesnel and Ors. v Dorelle and Ors 1867 MR 61).*

The circumstances in which the Co-Respondents have been put into cause, the ‘confusion’ as to the representation by attorney at the formal stage, as stated above and which could be the reason for the delay in preparing the SOD, as well as the initial stand of not objecting to the postponement to file the SOD are all reasons which, in our view, call for a discretion to be exercised by this Tribunal to allow the Co-Respondents to file their SOD, albeit outside delay.

Counsel for the Co-Respondents has raised that the amendment to section 5 of the ELUAT Act makes no provision for the Appellant to inform the Respondent and Co-Respondents of the delay to resist the appeal if they so wish. This is a matter for the

Legislator to enact. Similarly, the issue raised as to the impact of such omission on the right to a fair hearing as guaranteed by the Constitution is a matter to be raised before the appropriate jurisdiction. As matters stand, this Tribunal exercises its powers within the parameters of the existing provisions of the ELUAT Act.

In the light of the above, the plea in limine litis raised by the Appellant is set aside. We exercise our discretion to allow the Co-Respondents to file their Statements of defence.

Delivered by:

**Mrs. Vedalini Bhadain, Chairperson**

**Mrs. Purnima Rawoteea, Assessor**

**Dr. Yaswaree Mihilall, Assessor**

Date:

..... 3 October 2018 .....