

IN THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 1398/17

In the matter of:

Dessalles Louis Robin

Appellant

v/s

District Council of Savanne

Respondent

In the presence of:

Bouigue Developpement (Maurice) Ltee

Co-respondent

RULING

1. The present appeal is against the decision of the Respondent for having granted a Building and Land Use Permit ["BLUP"] to the co-respondent for the renovation and conversion of an existing building at ground floor to be used as market fair; for the construction of a building comprising of two commercial units and toilet block at ground floor and sales office at first floor; construction of a civil status office, at lot 15, Ruisseau des Creoles, Black River, Savanne Coast Road, Baie du Cap, as per letter dated 14.04.17 emanating from the Council and addressed to the Appellant.
2. At the outset the co-respondent raised a preliminary objection to set aside the appeal on the basis that *"The appellant cannot proceed with the appeal and the Tribunal cannot entertain the present appeal because the appeal was lodged outside the statutory delay prescribed by law."* The motion was resisted by the Appellant and the Respondent's stand was to abide by the decision of the Tribunal.

3. The issue of contention being the date of notification to the Appellant, Counsel for the Appellant chose to call an officer of the Post Office of Chemin Grenier and the Appellant to substantiate the Appellant's position. While the Postal Executive simply testified to the Tribunal that there was no record at the Post Office of any letter emanating from the Council to the Appellant, as the practice to keep a record of non-registered mail is non-existent, the Appellant testified that the 14th April 2017 was a Friday and that he only received the letter from the post on the following Friday. Counsel for the Respondent called evidence to show that the letter from the Council dated 14th April 2017 notifying the appellant of its decision to grant the BLUP was posted to the latter on the same day, that is, the 14th April 2017 by ordinary post and not by registered post. These witnesses were all subjected to cross-examination. We have duly considered the submissions of all counsel. We shall only make reference to Counsel's submissions where we deem it fit to do so.

4. Under **section 4 of the Environment and Land Use Appeal Tribunal Act 2012**, the Tribunal has the jurisdiction to hear and determine appeals from a decision of a Municipal City Council, Municipal Town Council or District Council under **section 117(14) of the Local Government Act 2011**. This appeal was lodged pursuant to **section 117 (14) of the Local Government Act 2011** as amended, which provides in essence that any person aggrieved by a decision of a Municipal City Council, Municipal Town Council or District Council may within 21 days of receipt of the notification, appeal to the Environment and Land Use Appeal Tribunal. While the provision of the law is not challenged by the appellant, the issue in dispute in the present case is the actual date of notification of the impugned decision to the appellant.

5. As per the requirement of the **Environment and Land Use Appeal Tribunal Act 2012 ["ELAT Act"]**, every appeal lodged before the Tribunal has to be in the form of the notice of appeal as prescribed in the schedule annexed to the Act. The proceedings of the Tribunal are regulated under **section 5** of the Act. **Section 5 (4)(a)** provides "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 stresses are ours]

6. At paragraph 2 of the Notice of Appeal the information requested to be provided is

“2. Date of notification of decision (evidence to be attached).....”

It is not contested that the date of notification that the appellant has inserted at paragraph 2 of the Notice of Appeal is the **“14.04.17”** nor is it contested by the appellant that no documentary evidence was attached to the notice of appeal to act as proof of the date of receipt of the letter from the council hence the notification, as per the requirement of the notice of appeal set out in the schedule. The record shows that the notice of appeal was lodged at the Tribunal on the 8th May 2017. A statement of case duly signed by the appellant was also received at the Tribunal on the 8th May 2017.

7. The case for the appellant, as stated above, is that although the date of notification had been inserted as 14.04.17, the appellant only received the letter from the Council one week later. There is no independent evidence put forward by the appellant to prove that he received the letter from Council informing him of their decision one week later than the 14th April 2017. In practice, an appellant would normally attach to his notice of appeal the envelope (which had contained the letter of the Council) bearing the stamp of the Post office as proof to show the date on which the letter was delivered to him. This was not done by the appellant and instead he deponed before the Tribunal to say that he received the latter one week later. After assessing the evidence, we do not subscribe to this for two reasons. Firstly, at paragraph 3 of the statement of case of the appellant which has also been filed at the Tribunal on the 8th May 2017 with the notice of appeal, the appellant avers that on 14.04.17 the Respondent informed the appellant of its decision.

8. Secondly, we do not believe we can rely on the testimony of the appellant. He contradicted himself in cross-examination on numerous occasions to the extent of contesting that he had lodged an appeal before the Tribunal. He sought to convey to the Tribunal that his notice of appeal was tampered with, then he stated that he had not filled out the form but simply signed it, he stated at some point that he did not understand English so he was not aware of the contents of the form and later he stated he did not know who filled out the form and finally he elected not to answer. Counsel for appellant attempted to rehabilitate his witness by stating that the contents of the notice of appeal was all admitted but the demeanor of the appellant did not impress the Tribunal.

9. Counsel for the Appellant submitted that on the principle of "He who avers must prove", it was for the co-respondent to prove when the letter from the Council was received by the appellant. We believe that the co-respondent has relied on the pleadings and documents provided by the appellant himself. Ex-facie the notice of appeal as duly filled out by the appellant, which clearly stipulates the date of notification as the 14th April 2017 and the stamp of the Tribunal which shows that the appeal was lodged on the 8th May 2017, the co-respondent was legally entitled to have used the appellant's own documentary evidence against him to prove that the appeal was lodged out of time. It was submitted that the appellant's version remained un rebutted that he received the letter of the Council one week after the 14th April 2017. We do not agree. The appellant chose to be highly evasive and contradictory when he was being cross-examined by counsel for the respondent on the date of notification.

10. Counsel for the appellant sought to make a distinction between "date of notification" and "date of receipt of notification". We believe that as a matter of common sense, the date inserted on a letter cannot be equated to "date of notification". The term "notification" as per Oxford English Dictionary meaning is "The action of notifying someone or something" and to "notify" means "to inform" or "to make known". It therefore stands to reason that if a letter is dated and not posted but kept in the drawer

of the Council, the date inserted on the letter cannot possibly amount to the date of notification. The date of notification is the date on which the appellant receives the letter informing him of the decision of the Council regardless of whether or not he reads the letter. In the light of this analysis, we do not subscribe to the submissions of learned Counsel appearing for the appellant on the issue.

11. We believe that the provisions of **Section 5(4) (a) of the ELAT Act** clearly spell out that all appeals are to be lodged not later than 21 days from the date of notification to the party wishing to appeal such that there can be no confusion as regards the time limit afforded to an appellant for the lodging of his appeal. This provision has been drafted in mandatory terms using the words "shall...be brought" and "not later than 21 days", which show that the intention of the legislator was infact to give to the Tribunal in this specific context no discretion to travel outside the time frame provided by the law. We are of the view that we cannot rely on the testimony of the appellant, which seemed doubtful, that he was not notified of the decision of the Council on the date inserted by him in the notice of appeal, that is 14th April 2017 but one week later. There is no independent evidence to support the version of the appellant. The witness of the appellant that was deputed by the Post Office was not of much assistance. Furthermore, there was never a motion made to amend the date of notification on the notice of appeal.

12. In the flimsy testimony of the appellant and for all reasons set out above, we have no alternative but to fall back on the pleadings. We find that the date of notification is 14th April 2017, as inserted in the notice of appeal by the appellant and also averred in his statement of case. This is the date from when the computation starts and being given that the appeal was received at the Tribunal on the 8th May 2017, some 25 days from the 14th April 2017, it is outside the time limit of 21 days prescribed by law.

13. For all the reasons set out above, we find that the preliminary objection was well taken by counsel appearing for the co-respondent. The appeal being made out of time, which in our view is a mandatory requirement under the law, it is set aside. No costs.

Ruling delivered on 8th June 2018 by

Mrs. J. RAMFUL-JHOWRY

Vice Chairperson

Dr. B. MOTAH

Member

Mrs. U. RAWOOTEAA

Member