

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

**ELAT 1474/17**

**In the matter of:**

**Manoj Dudhee**

**Appellant**

**v/s**

**Municipal Council of Curepipe**

**Respondent**

**RULING**

1. The matter arises out of an appeal lodged against the decision of the Municipal Council of Curepipe for refusing a Building and Land Use Permit to the appellant for an extension and for the conversion of part of a building to be used as an aluminium workshop and for the use of electric motors at Emilie Sauzier Street, Curepipe. At the hearing, Counsel appearing for the respondent moved for the stay of proceedings before the Tribunal on the ground that the objectors to the proposed development, who are interested parties, and some of whom had also raised their objections at a hearing before the Council, have not been put into cause. The motion was resisted by Counsel appearing for the appellant. We have duly considered the submissions of both Counsel in the matter.

2. The argument put forward by the respondent's Counsel is that the Tribunal's record of 19<sup>th</sup> September 2017 shows that the representative of the respondent had drawn the attention of the Tribunal and the appellant that there were six objectors and that following an objection for counsel for the appellant, the representative had moved for a postponement to file the statement of defence of the respondent. He further submitted that as per the statement of case of the appellant there is an averment that there had been objections and that one of the objectors was also present at the Hearing that took place at the Council prior to a decision being taken in the matter at the Council. Since none of these objectors, who are interested parties in this case have been joined as parties, he moves that the matter be stayed in as much as a decision cannot be taken "behind the back" of interested parties, and that in the circumstances, the matter has been wrongly entered and that no corrective action has been taken by the appellant to present his case despite an indication having been given to him by the Council since last year. The appellant's Counsel has argued in essence that it is upto the Council to substantiate its case since one of the reasons put forward by the Council was that there are objections received, the onus is therefore on the Council. It was submitted that the duty as far as the appellant is concerned, is that he has lodged an appeal against the decision of the deciding authority and he needs to prove his case on that basis. The appellant was never communicated any names of objectors despite the request made.
  
3. As a matter of rule in any civil case, He who avers must prove. As a matter of fact the last reason advanced by the Council as per letter of refusal dated 28<sup>th</sup> July 2017 addressed to the appellant under the signature of the Chief Executive, for refusal this application is that "*Justified objections received from immediate property owners/neighbours*". Therefore, in order to substantiate its case, we believe, it is tactically for the respondent to bring in evidence of these objectors for the Tribunal to assess whether there were infact objections and if so, whether these were justified as per the reason advance for refusal by the respondent.

4. We therefore find no reason why the appellant should join as parties to the case the objectors. They can be called as witnesses to substantiate the case of the respondent. In any event there is a duty not to overburden the record so that if the purpose of having these objectors' testimony on record for the appreciation by the Tribunal of any likely prejudice that may be caused to them then this can be achieved by simply having them called as witnesses rather than them being joined as parties and subjected to the burden of having to file pleadings and have to meet the case of the appellant.
  
5. Now, a distinction has to be made as to when joinder of parties are necessary. In a case where an objector lodges an appeal, for instance, it only stands to reason that the promoter or the holder of the Building and Land Use Permit ['BLUP'], be joined as a party as an appeal cannot be heard and determined where the subject matter in debate is the BLUP that he holds. In such circumstances, it cannot be denied that BLUP holder has an interest in the matter, hence would need to be joined as a party to either defend his position and/or take cognizance of any final determination since it will ultimately directly affect his development: **The Public Service Commission v/s The Public Bodies Appeal Tribunal IPO Man Lan Wong Chow Ming (2011) SCJ 382.**
  
6. Counsel for the respondent referred us to authorities such as **Lagesse v/s Town and Country Planning Board & Ors 235 SCJ (2000)** and **Nuckcheddy & Ors v/s Town and Country Planning Board & Ors 152 SCJ (2012)**. The Tribunal is of the view that the authorities cited can be distinguished from the present appeal in that in those cases the decision-making body was never put into cause. The common thread running through the cases referred to above, principles that this Tribunal also supports, is that if a party is impugning a decision-making body's findings or decision, due process demands that as a matter of obligation the decision-making body be put into cause so that on appeal the latter can motivate the basis for its decision thereby allowing the appellate body to take an informed view on the merits of the appeal. Therefore, a failure to put a decision-making body into cause would be fatal to the proceedings.

7. While the Tribunal subscribes to the view 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 case of Man Lan Wong *supra*, 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. We believe that the joinder of the objectors as co-respondents is not required in the present case as they can be called as witnesses by the respondent to meet the case of the respondent. In any event, if the objectors wish to be joined as parties, there exists a procedure of filing a notice of intervention. The purpose of a notice of intervention is to give notice to the litigants that there is a party that seeks leave from the court or Tribunal to intervene in litigation on the ground that it has a legitimate interest in the matter. In any event, if the averment of the appellant, as per his statement of case, is proven to the extent that at the hearing before the Council the appellant was not given access to information regarding the identity of the objectors then it would result in an undesirable state of affairs to tax the appellant for information he could not possibly have access to except through the Council.
  
9. For all the reasons set out above, we find that the motion for stay of proceedings is devoid of merit. The matter is to proceed on its merits and the Council may wish to call as witnesses the objectors to substantiate its case.

Ruling delivered on 6<sup>th</sup> September 2018 by

**Mrs. J. Ramful**  
Vice Chairperson

**Mr. Saulick**  
Assessor

**Mr. Monaff**  
Assessor