

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

**Cause No. : ELAT 1507/17**

**In the matter of:**

**APPELLANTS**

- 1. THE SEA USERS ASSOCIATION**
- 2. VIRGINIA LAMARQUE**
- 3. XAVIER KOENIG**
- 4. CHRISTOPHE PELLICIER**
- 5. GAEL BECHARD**

**v.**

**RESPONDENTS**

- 1. MINISTRY OF SOCIAL SECURITY, NATIONAL SOLIDARITY AND ENVIRONMENT AND SUSTAINABLE DEVELOPMENT**
- 2. MINISTER OF SOCIAL SECURITY, NATIONAL SOLIDARITY AND ENVIRONMENT AND SUSTAINABLE DEVELOPMENT**

**In presence of:**

**CO-RESPONDENTS**

- 1. GROWFISH INTERNATIONAL (MAURITIUS) LTD.**
- 2. MINISTRY OF OCEAN ECONOMY, MARINE RESOURCES, FISHERIES AND SHIPPING**
- 3. MINISTRY OF TOURISM AND EXTERNAL COMMUNICATIONS**
- 4. BOARD OF INVESTMENT**
- 5. MINISTRY OF DEFENCE AND RODRIGUES, DEPARTMENT OF CONTINENTAL SHELF, MARITIME ZONES ADMINISTRATION & EXPLOITATION**
- 6. THE DISTRICT COUNCIL OF BLACK RIVER**

## **RULING:**

1.The Appellants (hereinafter referred to as Sea Users case) have moved that the present case be consolidated with the case of Association of Hoteliers and Restaurants (AHRIM) v. The Ministry of Social Security, National Solidarity and Environment and Sustainable Development, i.p.o Growfish (International (Mauritius) Ltd. & Others (bearing number ELAT 1502/17 and hereinafter referred to as AHRIM case).

The Respondents as well as Co-Respondents No.2, 3, 5 and 6 (namely the respective Ministries and the local authority) have indicated that they will abide by the decision of the Tribunal. It was stated on behalf of the District Council (Co-Respondent No.4) that it will object to the motion for consolidation but made no submission in support of this position.

Co-Respondent No.1 (hereinafter referred to as Growfish) has objected to the motion. AHRIM, having been granted permission to intervene for the purposes of the present argument, has indicated that it has objection to having the two cases consolidated.

## **2. Joinder of actions**

We have considered the submissions made on behalf of the Appellants, Growfish and AHRIM. In relation to the principles governing the issue of consolidation, we stand guided by the Rules of the Supreme Court, namely Rule 18, as well as the pronouncements made by the Supreme Court on the issue of joinder of actions.

Rule 18 of the Supreme Court Rules 2000 provides as follows:

### ***“18 Joinder of actions***

- (1) Subject to paragraph (2), different causes of action of whatever nature by and against the same parties and in the same rights may be joined in the same suit.*
- (2) The Master or the Court may order separate records to be made and separate trials to be held, if it is inexpedient to hold the trial of the different causes of action together”.*

The case of **Gavin Renganaden Venchard v Eendren Venchard 2016 SCJ 162** has provided guidance on this matter and the authorities relied upon by the Court were summarized by the Learned Judge, with particular reference to English case law, which is reproduced below:

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Sea Users Association & Ors v. Ministry of Social Security, National Solidarity and Environment and Sustainable Development & Ors.

- (a) *The power of the Court to consolidate proceedings was introduced to avoid a multiplicity of proceedings covering largely the same ground and, thus, to reduce costs and delays (Re- **Martin v Martin [1897] 1 Q.B. 429, CA,***
- (b) *One of the grounds on which consolidation is allowed is that of convenience (**Healey v. A Waddington & Sons Ltd [1954] 1 W.L.R. 688, CA,***
- (c) *Consolidation will not usually be ordered if the issues in the two actions are not identical or so substantially similar as to make no difference (**Daws v. Daily Sketch [1960] 1 WLR 126, CA,** and*
- (d) *Consolidation will not usually be ordered unless there is some common question of law or fact bearing sufficient importance in proportion to the rest of the subject matter of the actions to render it desirable that the whole should be disposed of at the same time (**Daws v. Daily Sketch (supra),** quoted in **Teelucksing v. Muttur [1995 SCJ 161).***

### **3. The grounds of appeal**

It has been submitted on behalf of Co-Respondent No.1 (Growfish) that the matters forming the basis of the appeal in the two cases differ substantially. This has been the stand of AHRIM, which highlighted that the grounds of appeal should be the decisive criteria to differentiate the two appeals before this tribunal.

We have gone through the grounds in the case of **AHRIM**. Out of the six grounds listed in the notice of appeal the first ground relates essentially to what has been referred to as the 'risque requin'. The second ground relates to failure to abide by the requirements of the Environment Protection Act and the lack of information on the project and its impact on the environment, on other stakeholders, among other things. Grounds 3, 4, 5 relate to the flaws in the consultation process and ground 6 evokes the actual or potential conflict of interest and/ or lack of independence in this project.

In the case of **Sea Users Association**, the appeal is against the same EIA licence. There are five grounds of appeal, the first two grounds relate to the physical location of the proposed project, i.e. issues regarding the site plan, the certificate from a notary and evidence of a concession from the Prime Minister's Office. The second ground is a challenge of the description of the undertaking that was provided, as required by Section 18(2) the Environment Protection Act. The reasons for the challenge range from the zoning of the site to the assessment of the economic and social impact of the project as required by section 18(2) of the EPA. The second ground also covers issues of adverse impact of the project on the environment and the process to deal with these impacts (namely through an environmental monitoring plan), among other concerns. Ground 3 relates to the consultation process (or lack

thereof). Ground 4 relates to the failure to take into account the obligations of the State under international conventions as well as under the Environment Protection Act, including other policy and guidelines issued in relation to the protection of the environment and fish farming. Ground 5 relates to what is termed as the 'manifest conflict of interest between organs that were involved in the decision making process'.

Counsel for AHRIM stated (with the permission of the Tribunal) that it is not 'what is being challenged' that should be looked into but 'why is being challenged'. It is our view that what we have to decide at this stage is 'how the challenge' is going to be addressed, whether to have the cases heard together or separately. Emphasis was placed on the differences in the grounds of appeal in the respective cases. This has been addressed above.

Although the grounds of appeal may differ in the respective appeals, we find that the grounds as drafted in the Sea Users case encompass a broad spectrum, which include certain issues forming the basis of the grounds of appeal filed in the AHRIM case. We do not propose to comment on these at this stage before hearing evidence on the matter.

#### **4. Lien de connexite**

We find that the 'lien de connexite' between the two cases is a relevant matter for us to consider. On this legging, we refer to the interlocutory judgment given in the case of **Lesage M J C R v Mauritius Commercial Bank 2008 SCJ 252**, where the issue of litispendance and connexite was addressed. The Learned Judge, referred to Article 171 of the Code de Procedure Civile and to the definition of 'connexite' as follows:

*"La connexite (du latin connexus, de connecter qui signifie "lier ensemble" est le lien etroit entre deux demandes non identiques mais telles qu'il est de bonne justice de les instruire et de juger en meme temps afin d'eviter des solutions qui pourraient etre inconciliables."* (Encyclopedie Dalloz Procedure Civile Connexite (Receuil Vo. Exceptions de procedure)".

*"Another definition from Dalloz Codes Annotes, Nouveau Code de Procedure Civile C.PR. CIV-ART 171 1er Part LIV II Note 154: "L'exception de connexite suppose, a la difference de la litispendance, deux affaires distinctes et qui, sans etre necessairement liees entre les memes parties, presentment de tels rapports entre elles que, si les tribunaux rendaient deux jugements en sens contraire, il n'y aurait pas sans doute opposition*

*de chose jugée, mais il serait difficile ou peut être même impossible de faire exécuter les deux sentences.”*

In **Lesage** (supra), based on the above doctrine, the Learned Judge ordered the consolidation of the two cases subject matter of a plea in limine, holding that “*As such I find that ‘les deux instances, bien que relatives a un objet different, ont entre elles une correlation telle que la solution de l’une doive necessairement influencer sur la solution de l’autre’ (Note 161)...*”

In **Venchard** (supra), submission was made by counsel that there was a lien de connexite between the two actions and the doctrine was relied upon: **Dalloz, Repertoire de Procedure Civile, Tome II, Vo. Connexite, note 1 and 2**, quoted in **Maureemootoo v Sutterle 2012 SCJ 224**:

1. “...le lien troit entre deux demandes non identiques mais telles qu’il est de bonne justice de les instruire et juger en meme temps afin d’éviter des solutions qui pourraient être inconciliables...”
2. “...les instances presentment entre elles une correlation telle que la solution de l’une doive necessairement influencer sur la solution de l’autre, de telle sorte que si elles étaient jugees separement, il risquerait d’en resulter une contrariete de decisions...”

The Learned Judge in the case of **Venchard** used the test in **Daws v. Daily Sketch** (supra) and decided that ‘*the two cases are not identical or so substantially similar as to make no difference*’, on the basis of which he declined to allow the motion for consolidation.

It is our view that the principles followed in **Lesage** should apply here, where the Learned Judge stated “*As such I find that ‘les deux instances, bien que relatives a un objet different, ont entre elles, une correlation telle que la solution de l’une doive necessairement influencer sur la solution de l’autre’*” **Note 161Dalloz Codes Annotes Nouveau Code de Procedure Civile. ....Therefore I am of the view that it would be “de bonne justice de les instruire et juger en meme temps afin d’éviter des solutions qui pourraient être inconciliables” Encyclopedie Dalloz Procedure Civile Connexite.**

##### **5. The practical difficulties**

We have taken on board the concern expressed by counsel for AHRIM on the evidential hurdles that the Sea Users case may face, and their impact on the AHRIM case. These hurdles will have to be addressed as the hearing unfolds. In line with the above cited authorities, we do not propose to proceed with two sets of hearings on matters which concern the same decision under appeal. The potential effect of

reaching irreconcilable decisions will be of more consequence and will not serve the interests of justice. The test as applied in the case of Venchard is not departed from. The grounds may not be so substantially similar but are in relation to the same EIA licence. Furthermore, hearing the cases together will avoid delay and a multiplicity of proceedings where the subject matter of the appeal is the same and the remedy sought is the same.

The apprehension expressed by 'Growfish' is that the Appellants in Sea Users case may seek to introduce evidence that they would have been unable to bring before the Tribunal by reason of an earlier ruling. Again, this is a matter that needs to be addressed as the hearing unfolds. The strategy of each party in the conduct its case cannot overshadow the broader concern which is that of serving the interest of justice by avoiding delay, multiplicity of proceedings and avoiding potentially irreconcilable decisions. Consolidation of the cases will, in our view, achieve this purpose.

#### **6. The decision**

For all the reasons stated above, we allow the motion for consolidation made on behalf of the Appellants.

Ruling delivered by:

**Mrs. V. Phoolchand-Bhadain, Chairperson**

**Mr. P Manna, Assessor**

**Dr. R. Bhagooli, Assessor**

Date: 7<sup>th</sup> June 2018