

IN THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 1153/16

In the matter of:

Abdool Hamid Hossenkhan

Applicant

v/s

The City Council of Port Louis

Respondent

In the presence of:

**A & N Hayat Imports Ltd,
represented by Mr. Mahmad Afize Soobye**

Co-respondent

RULING

1. This is an appeal against the decision of the respondent for having granted a Building and Land Use Permit ("BLUP") to the co-respondent for construction of a hardware shop and store on a portion of land situated at No.6 Municipality Street, Port Louis. At the outset counsel appearing for the co-respondent raised a preliminary objection to the effect that *"the appeal is procedurally defective in as much as the appeal does not set out the particulars of the decision against which the appeal is made and the ground of appeal per se as filled in by the appellant, as set out in the form that was filled in is vague"*. He moved that the appeal be therefore set aside. The motion was enjoined by the respondent but was resisted by the Appellant. We have duly considered all submissions of counsel. We will not overburden this ruling with their submissions except where we deem it necessary to make some reference.

2. **The Environment and Land Use Appeal Tribunal Act 2012** [**'ELUAT Act'**] which was proclaimed in October 2012, provides for the procedure to be adopted for the lodging of an appeal under **section 5 (4) (a)** which reads as *"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 Notice of Appeal as set out in the Schedule of the Act allows the appellants to set out their grounds of appeal, which in essence are their grounds of grievance on the basis of the impugned decision.

3. Following an amendment to the **ELUAT Act 2012** by **The Finance (Miscellaneous Provisions) Act 2016**, this procedure of lodging an appeal under **section 5 (4) (a)** before the Tribunal has been modified so that now every notice of appeal referred to under sub-paragraph **(a)** has to be accompanied by a statement of case as per new sub-paragraph **(aa)** and as per new sub-paragraph **(ab)** the statement of the case shall contain precisely and concisely the facts of the case, the grounds of appeal and the arguments relating thereto, submissions on any point in law and any other submissions relevant to the appeal.

4. We note that under the old **section 5(4) (a)** and the amended **section 5 (4) (a)**, there is a requirement for the grounds to be drafted "precisely and concisely". The wording of the law also stresses on its importance by using the mandatory term "shall" from the provision that the *"statement of case shall contain precisely and concisely the facts of the case, the grounds of appeal..."* We agree that there is a burden on the appellant to satisfy the Tribunal that it has a case which needs to be met by the other protagonists and also for the Tribunal's own understanding of the issues in adjudication so the grounds of appeal should not be vague. Looking at the grounds of appeal as per the notice of appeal in this case, we find that they are indeed vague, as rightly pointed out by Counsel for the co-respondent.

5. We believe, however, that we need to look of the Act in *toto* and the spirit of it. The Act now makes it mandatory for the appellant to file a statement of case alongside the notice of appeal. The Tribunal cannot therefore simply restrict itself into looking at the grounds of appeal in the notice of appeal solely. There is a duty to consider the statement of case. In the present case, the appellant seems to have his grounds of appeal, which are his grievance set out mainly at paragraphs 2 and 3 of his statement of case. It may not be drafted in the best English but in our opinion it was not "*imprecise in thought and expression*" as submitted by Me. Husseny, for the respondent and quoting an extract from **Ramgoolam v The State [2017] SCJ 163**. As a quasi-judicial body which dispenses justice, the Tribunal has a duty to look at the merit of the appeal in substance and not the form of it. This would also be in line with **section 5 (3) (b) of the ELUAT Act** which provides that the any proceedings of the Tribunal shall be conducted with as little formality and technicality as possible.
6. The submissions of Counsel appearing for the respondent and co-respondent would be particularly relevant in normal civil proceedings where a cause of action must be disclosed through pleadings or appeal where the appellate court does not hear oral testimony. The grievance and grounds of contest of appellants rest solely on the grounds of appeal, put in as a document entitled "grounds of appeal" as common practice. The procedure before this Tribunal differs from that. Agreeably, the grounds of appeal are of utmost importance but should not to be looked at with an unduly legalistic approach. The way to treat the grounds of appeal, in our view, varies from case to case. In the present case, we believe that although the grounds of appeal as per the notice of appeal are vague and very loosely drafted, the statement of case of the appellant offers clarity on the nature of his grievance and sheds light on his grounds for contesting the decision of the Council. We cannot be oblivious to them, the moreso as the issues raised concern the planning merits of the application at hand. In the case of **Toumany and Anor v/s Veerasamy [2012] UKPC 13**, their lordships have encouraged even the courts

of Mauritius to be less technical and more flexible in their approach to jurisdictional issues and objections. We couldn't agree more.

7. It is also agreed by Counsel for the co-respondent that the grievance is understood and that is why the co-respondent gave its stand. The record shows that both the respondent and the co-respondent have filed a statement of defence each whereby the averments made by the appellant in his statement of case have been replied by both.
8. For all the reasons set out above, the preliminary objection in law raised by the co-respondent and respondent is set aside. The appeal is to proceed. The matter is fixed pro-forma.

Ruling delivered on 15th November 2018 by

Mrs. J. RAMFUL

Vice Chairperson

Mr. LEPOIGNEUR

Assessor

Mr. MONAFF

Assessor