

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 610/14

In the matter of :-

Nitin Mukesh Gungaram & Others

Appellant

v/s

District Council of Riviere du Rempart

Respondent

IPO:

- 1. Minister of Local Government and Outer Islands**
- 2. Aisha Siddiqua Islamic Centre**

Co-Respondent

RULING

1. At the outset, Counsel appearing for the co-respondent no.2, Aisha Siddiqua Islamic Centre, raised a plea in *limine litis* that this Tribunal has no jurisdiction to hear the present appeal and that it should be set aside. The crux of counsel's submission is that the decision to grant a BLUP to the co-respondent is essentially a decision of the Minister of the Local Government which is conferred on him by virtue of **section 117(9) of the Local Government Act 2011**. Whereas **s.117(14) of the Local Government Act 2011 (LGA)** coupled with **s.4(1)(a) (ii) of the Environment and Land Use Appeal Tribunal Act 2012**, provides for persons aggrieved to bring a case before this Tribunal, no reference is made under **s.117(14) LGA** to **subsection 9** such that those bringing an action before the Tribunal are precluded from contesting any decision taken by the Minister while he is exercising his powers under **section 117(9) of the LGA**.

2. The co-respondent no.1 joined in the submissions of co-respondent no.2. The motion was resisted by the Appellant while the Respondent chose to abide by the decision of the Tribunal. While we do not intend to overburden this ruling with the submissions of each of them except where we deem it necessary to do so, it suffices to say that we have duly considered the submissions of all counsel.

3. The appeal is against a decision to grant a BLUP to the co-respondent for the construction of a place of worship. The Appellants' statement of case does in fact reflect that they are aware that the application for BLUP was made in respect of a place of worship. Indeed grounds of appeal I,II and V, all seek to challenge the Minister's decision in that he was wrong to have approved the application for a mosque, which is obviously a place of worship.

4. It is important to know why the Minister of Local Government's approval was sought for this application. His powers emanate from **section 117(9) of the LGA 2011**:*"Except with the Minister's approval, no Outline Planning Permission or Building and Land Use Permit shall be issued for any development of land, construction of a building or extensive alterations, additions or repairs to an existing building –*
 - (a) along a mountain reserve, or a river reserve, or a motorway;*
 - (b) for use as a night club, private club or **place of public worship**;*
 - (c) for the carrying on of any activity licensed under the Gambling Regulatory Authority Act; or*
 - (d) for the carrying out of such other activity as may be prescribed."*[the stress is ours]The legal provisions which govern the jurisdiction of this Tribunal are found under **Section 4 (1) (a) of the Environment and Land Use Appeal Tribunal Act 2012** which states *"Tribunal shall hear and determine appeals...from decisions of a decision of a Municipal City Council or District Council under section 117(14) of the Local Government Act 2011."*

Now, **section 117(14) of the LGA 2011** as amended by the **Environment and Land Use Appeal Tribunal Act 2012** provides

*“Any person aggrieved by a decision of a Municipal City Council, Municipal Town Council or District Council under subsections **7(b), 8(b) or (12)** may, within 21 days of receipt of the notification appeal to the Environment and Land Use Appeal Tribunal established under section 3 (1) of the Environment and Land Use Appeal Tribunal Act 2012.”* [the stress is again ours]

5. The relevant section of the law which governs the Minister’s power to take decisions for BLUP applications for a place of worship, when read in conjunction with the legal provisions empowering this Tribunal to hear cases within its appellate jurisdiction, makes it clear that **section 117(9) LGA** does not find its place here. We cannot read more into the law than what has clearly been stipulated. There is clearly no power for the Tribunal to entertain any application which has been considered under **s.117(9) LGA**. It seems that it was the intention of the legislator, in as much as this Tribunal has been given the power to look into cases where the Minister has a *droit de regard* under **section 117(12) LGA**, there is as much of an intention for the Tribunal not to encroach on the jurisdiction of the Supreme Court where Ministerial powers are challenged by way of judicial review.

6. It is clear from the grounds of appeal and the prayer sought, that the appellants admit that the decision maker is the Minister, and we agree with that. The decision has to be one made by the minister because, as rightly submitted by counsel for the co-respondent no.2, it is a matter of public order. Infact a close reading of **section 117(9) LGA** shows that all the elements and factors considered under those broad items relate in some way to issues of public rights, interest or public order, in other words, issues having a public law element. It is important to note at this juncture, that **section 117 (9) of the LGA** was amended in 2016 but the determination for applications for BLUP for places of worship still vests exclusively with the Minister.

7. There is no doubt that it is not within the jurisdiction of this Tribunal to hear matters relating to the discretionary powers of the minister especially when it comes to issues of public law and public order. These fall within the realm of administrative law which can only be challenged by way of judicial review. Infact, the prayer sought by the appellants simply confirm that they are seeking the type of redress that can only be sought in cases of judicial review.

8. For all the reasons set out above, we are of the view that the *plea in limine* was rightly taken. This Tribunal has no jurisdiction to hear the matter. The appeal is therefore set aside.

Ruling delivered on 17th April 2018 by

Mrs. J. RAMFUL

Vice Chairperson

Mrs. RAWOTEEA

Assessor

Mr. G. LEPOIGNEUR

Assessor