

IN THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 1505/17

In the matter of:

- 1. Christophe Jean Francois Pitot**
- 2. Marie Jean Pierre Tostee**
- 3. Valerie Jacqueline Patricia Eswaree (Zimmer)**
- 4. George Ah-Yan, acting as spokesperson of "Forum des Citoyens Libres"**

Appellants

v/s

**The Minister of Social Security, National Solidarity and
Environment and Sustainable Development.**

Respondent

In the presence of:

**KI Grand Bay Residences by Yellow Features Limited,
Chemin Vingt Pieds, Grand Bay.**

Co-respondents

RULING

1. The present appeal is against the decision of the Respondent for having granted an Environment Impact Assessment Licence to the KI Grand Bay Residences by Yellow Features Ltd for the construction of high standard self-catering apartment complex at Pereybere. At the outset the co-respondent raised a three limbed plea in *limine litis* to sustain its motion to set aside the appeal, as follows:

"1. The appeal was made out of time.

2. The Appellants have no locus standi in as much as, ex facie the appeal, the grounds of appeal do not pertain to any interest of theirs which need to be protected.

3. The Appellants have not averred any prejudice in their appeal."

2. The Respondent essentially joined in the submissions of the co-respondent but the motion was resisted by the Appellants. It is not disputed by Counsel appearing for the Appellants that the appeal is out of time. He submitted that the appeal is out of time by one day and has urged the Tribunal to exercise its discretion to allow the appeal. 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.

3. Under **Section 4 of the Environment and Land Use Appeal Tribunal Act 2012**, the Tribunal has the jurisdiction to hear and determine appeals under **Section 54 of the Environment Protection Act 2002**. This appeal was lodged pursuant to **Section 54 of the Environment Protection Act 2002** as amended, which provides

"54. Jurisdiction of Tribunal

(1) The Tribunal shall hear and determine appeals against—

(a) a decision of the Minister under section 16 (6), 17 (1), 23 (2), 23 (4), 24 (3) (a), 24 (3) (b) or 25 (1);

(b) ...

(c) ...

(2) Where the Minister has decided to issue an EIA licence, any person who—

(a) is aggrieved by the decision; and

(b) is able to show that the decision is likely to cause him undue prejudice, may appeal against the decision to the Tribunal."

The proceedings of the Tribunal are regulated by **Section 5 of the Environment and Land Use Appeal Tribunal Act 2012 ["ELAT 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 stress is ours]

4. The notice of appeal clearly shows that the appeal was lodged on the 27th October 2017 and the date of notification of the decision as inserted by the Appellants at paragraph 2 of the notice of appeal is the 6th October 2017. The record shows that the Appellants have always been legally represented since their grounds of appeal and statement of case have been drafted by their attorney. It is to be noted that it is not contested by the appellants that the appeal was lodged at the Tribunal 22 days after the date of notification. Counsel appearing for the appellants urged the Tribunal to exercise its discretion to accept the appeal in view of the fact that the permitted time frame was exceeded by one day only.

5. 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 allocated 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 believe that the drafting language used by the legislator under **section 5(4) of the ELAT Act** is mandatory and not discretionary.

6. We note that although the Appellants appeal is outside the prescribed time frame, and this is not contested by them, there was never any motion for leave to appeal outside the time limit and this despite them being legally assisted. No reason has been provided as to why the appellants are requesting the Tribunal to exercise its discretion to accept this appeal except it was submitted by Learned Counsel appearing for the Appellants that one day beyond the time frame is not fatal and that the Parliament has amended the law and imposed procedural requirements which "*is a big hill to climb*". We do not agree with these submissions. It is infact well settled that time limits in such matters are peremptory unless an Appellant can show that the fault is not his, nor that of his legal advisor.

7. There is an array of cases to the effect that the delay governing appeals should be strictly complied with Lagesse v Commissioner of Income Tax [1991] MR 279, Laurette &ors v The State [1996] SCJ 296, Emamally v The State [2004] SCJ 294, Panday v The Judicial and Legal Service Commission [2007] SCJ 54, Sewraz Freres Ltd (in receivership) v British American Tobacco [2013] SCJ 400. In the case of Ramtohil v The State [1996] MR 207, the Court observed that it could exercise its discretion to consider certain new exceptions to the established principle. We do not believe that we have such discretion but even if we were to accept for arguments sake that we do have it, we are not provided with any ground as to why this case is to be treated with exception. Infact we have not been provided with any valid reason as to why the appellants have lodged their appeal outside the prescribed time frame nor has there been a motion by Counsel for the Appellants for leave to appeal outside delay.
8. For all the reasons set out above, we find that the point has been rightly taken by the co-respondent and the respondent. The appeal cannot be entertained as it has been lodged outside the mandatory time frame of 21 days as prescribed by law. We therefore uphold the objection taken by the respondent and the co-respondent. Having reached this conclusion, we do not deem it necessary to consider the other objections raised. The appeal is set aside. No order as to costs.

Ruling delivered on 7th May 2018 by

Mrs. J. RAMFUL-JHOWRY

Vice Chairperson

Dr. B MOTAH

Assessor

Mr. P. Manna

Assessor