

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

ELAT 1185/16

**In the matter of:-**

1. Mooneshwar Chintaram
2. Dewantee Ramchurrun

Appellant

v/s

**The Municipal Council of Quatre Bornes**

Respondent

**Nundkumar Ramchurrun**

Co-respondent

**RULING**

1. The present appeal is against a decision of the local authority ["the Council"] for having granted a Building and Land Use Permit ["BLUP"] to the co-respondent for general retailer foodstuff (excluding liquor) and non-foodstuff (Foodstuff predominant) and retail sale of fresh vegetables and fruits (along the road or in stores) and packaging activities (Foodstuff and Non-Foodstuff) at 11, Western Boundary, Quatre Bornes. Following the exchange of pleadings amongst the parties, the matter was fixed for arguments on the preliminary objection raised by the Co-respondent which is couched in their statement of defence as follows:

"3. The Appellants are bound to elect whether they will proceed with the present appeal or will proceed with the case they have filed before the Supreme Court bearing SCR 1/617/16. Appellant No1 is Plaintiff No1 whereas Appellant No2 is Plaintiff No4 in the said case. A copy of the said case which will be mentioned before the Supreme Court on the 14<sup>th</sup> September 2017 is hereto annexed and marked as Annex A.

4. It is of note that in the present appeal the Appellants are praying that the Building and Land Use Permit which the Respondent has issued to the Co-Respondent *"be declared null and void"* whereas paragraph 28 (iii) of the Amended Plaint pending before the Supreme Court the Appellants have prayed inter-alia for a judgment *"holding and decreeing that the Building Permit and Trade Licence"* issued by the Respondent to the Co-respondent *"are illegal"*.
  5. The Appellants cannot ignore the fact that the outcome of the present appeal can be subject to a judicial review before the Supreme Court.
  6. In the circumstances the Co-respondent prays that the present appeal be set aside."
2. The motion was resisted and the matter was argued. We have duly considered the submissions of all counsel. We shall make specific references to their submissions only where we deem it fit to do so. Learned Counsel for the Co-respondent, in essence, submitted on the fact that the Appellants in the present appeal have, together with some others, lodged a case before the Supreme Court whereby the prayer sought from that instance is for an order decreeing that the Building and Land Use Permit and Trade Licence issued by the Municipal Council of Quatre Bornes was illegal for reasons set out in the plaint with summons. There can therefore not be two parallel cases involving the same parties, same set of facts and circumstances. He submitted that the Appellants will have to elect before which jurisdiction to proceed with their case as there is a risk of conflicting judgments. A copy of the Plaint with Summons lodged before the Supreme Court to which allusion has been made, is annexed to the Statement of defence of the Co-respondent. Counsel for the Respondent joined in the motion of the Co-respondent.
3. Counsel for the Appellants disagreed that there was any connexite and the gist of her arguments was that the parties are not exactly similar since there are additional parties, the prayers sought are for damages in view of the nuisance being caused. There is thus, according to her submissions, no risk of conflicting judgments. She also submitted that a court of inferior jurisdiction, such as the Tribunal, cannot be the one to determine where the case should be heard.

4. We have perused the Complaint with Summons which have been referred to us, as an annexure to the Statement of Defence of the Co-respondent. It has for parties, four plaintiffs, out of whom, two are the Appellants in the matter before us. Amongst the four Defendants in the Complaint, Mr. Nundkumar Ramchurrun is Defendant No.1 whereas the Municipality of Quatre Bornes is styled as Defendant No.4. There are also three co-respondents in the Complaint.
  
5. Upon a close reading of the Complaint, there seems to be a stark resemblance between the averments made in the statement of case of the Appellants in the present case and the averments in the Complaint with Summons before the Supreme Court. The averments in both revolve around the nuisance that is being caused to the Appellants (plaintiffs in the case before the Supreme Court) and the paragraphs 15 and 22 (d) of the Complaint make specific reference to the Building and Land Use Permit granted by the Council. The prayer to the Court found specifically at paragraphs 28 (iii) and (v) of the Complaint requests for *“holding and decreeing that the Building Permit and Trade Licence issued by Defendant No.4 are illegal for the reasons set out in the Complaint”* and *“ordering the Defendant No.4 from taking the appropriate action to execute the judgment”* respectively. The submission made in the Statement of Case on behalf of the Appellants in the case before us is *“that the Trade License should be declared null and void.”*The record shows that at the sitting of the 7<sup>th</sup> June 2017, the attorney for the Appellants undertook to delete paragraph 28 (iii) of the Complaint with Summons lodged before the Supreme Court. There was subsequently no confirmation that this was in fact done.
  
6. We have several observations to make. The prayer in the Statement of Case makes reference to the Trade Licence being declared null and void. This Tribunal does not hear cases in relation Trade Licences, but rather regarding Building and Land Use Permits. The Tribunal has no power to declare a decision of the Council “null and void”. This is a remedy granted in cases of judicial review before another forum. The prayer as couched in the Statement of Case is thus incorrect and not within the powers of this Tribunal. There was never any motion for amendment of this prayer.

7. We also agree with the submissions of Counsel for the Co-respondent that risk of having parallel proceedings on the same issue and conflicting judgments on the same set of facts and circumstances would exist if this Tribunal were to hear the case. It took a simple comparative study to see that the Complaint with Summons encompassed the case before this Tribunal in that it included the same parties and more. There is a clear overlap of litigious issues brought in by the Appellants before both forums. It included similar prayers and more. We do not believe that a simple play on the words can change the fact that the same issues that will be canvassed before the Supreme Court and more, as were to be canvassed before this Tribunal. The effect of declaring a BLUP or Trade Licence as being illegal and ordering the Council to execute the judgment will undeniably have for effect that the BLUP or Trade Licence be rendered obsolete. We cannot agree with the submissions of Counsel for Appellants.
8. Finally, in the light of the Supreme Court case of **Baumann v District Council of Riviere IPO Syndicat des Co-proprietaires de Savannah Sparrow Residence & Anor [2019] SCJ 311** delivered recently, objectors are not considered as “aggrieved parties” within the meaning of **section 117 (14) of the Local Government Act 2011**, which renders them incompetent for lack of *locus standi* to bring in a case before this Tribunal.
9. For all the reasons set out above, more so that the Tribunal does not have the power to hear the appeal for the way the prayer has been couched and in the light of the recent judgment of the Supreme Court, the appeal is set aside as per the motion of the Co-respondent contained in its Statement of Defence. No order as to costs.
- Ruling delivered on 28<sup>th</sup> November 2019 by

**Mrs. J. RAMFUL-JHOWRY**

**Vice Chairperson**

**Dr. Y. MIHILALL**

**Member**

**Mr. G. LEPOIGNEUR**

**Member**