

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

**Cause No.: ELAT 1441/17**

**In the matter of:**

**MR. N. POTHEGADOO**

**Appellant**

**v.**

**MUNICIPAL COUNCIL OF VACOAS-PHOENIX**

**Respondent**

**RULING**

The Appellant has lodged an appeal against the Respondent for having granted a BLUP to the Co-Respondent for the conversion of an existing residential building at ground floor to be used as retail pharmacy and consultation room at La Caverne No.2 Vacoas, despite the objection lodged by him.

The Appellant was notified of the decision of the Respondent by letter dated 12<sup>th</sup> June 2017, which was received by the Appellant on the 16<sup>th</sup> June 2017. The notice of appeal together with a hand written statement of case were filed at the Tribunal on the 6<sup>th</sup> July 2017. A typed copy of the statement of case of the Appellant was filed on the 26<sup>th</sup> September 2017. An acknowledgement receipt from emanating from the Council was put in by the Appellant showing that the notice of appeal was received by them on the 16<sup>th</sup> June 2017. The record shows that the statement of defence was filed by the Respondent on the 26<sup>th</sup> September 2017. An amended statement of defence of the Respondent was filed on the 15<sup>th</sup> November 2017. The record does not show that the Appellant had made any objection at that point in time. On the same date the Co-Respondent was granted a postponement to file his statement of defence and this was done on the 28<sup>th</sup> November 2017. The

On the 7<sup>th</sup> May 2018, the matter was fixed for mediation upon motion of the Respondent and agreed upon by the Co-Respondent and on the 26<sup>th</sup> July 2018, parties indicated that

They would require more time to talk with a view to dispose of the matter. In the meantime the Appellant sent a number of letters to the Tribunal, raising points and making submissions therein. Tribunal acceded to the motion of Counsel for the Respondent for some time to consider them and take a stand. Ultimately, the stand of the Respondent was that the objections raised by the Appellant were frivolous and moved that the matter be heard on the merits.

On the 25<sup>th</sup> March 2019, after the start of the hearing, the Appellant challenged the bench. The matter started anew before a newly constituted bench on the 3<sup>rd</sup> October 2010. Upon the start of the hearing, the Appellant has raised objection to the filing of the statement of defence by the Respondent on the ground that this was being done after the delay of 21 days. We have perused the record and note that the Appellant had at no time made this objection before the Tribunal. He has through a number of letters sent to the Tribunal raised such points. The Tribunal cannot entertain motions nor record the stand of parties by way of letter. Be that as it may, the Appellant was allowed at this stage to state his objection so that the Tribunal could hear the arguments of both parties on the matter. The Appellant maintained that his objection was based on the fact that the Respondent had not given its stand on the objection made by him to the filing of the statement of defence outside delay. We find no basis on which this 'ground' should be entertained being given that no formal objection had been made at the Tribunal.

The Tribunal proceeded with the hearing the 'argument' with respect to the filing of the statement of defence outside delay. The Appellant, being inops consillii, made his own submission. The Respondent adduced evidence in support of its position. We have considered the respective positions of the parties.

We note the following:

1. The representative of the Respondent has adduced evidence which is to the effect that the statement of defence had in fact been filed within the delay of 21 days. This has not been rebutted by the Appellant.
2. We note also that there have been successive attempts to have a mediation on the matter.
3. The Respondent had on the 28<sup>th</sup> November 2018 requested for time to take a stand on letters which had been copied to the Respondent. It is clear from the record of the 30<sup>th</sup> January 2019 that the stand was that the objections were frivolous and moved that the matter be heard on the merits.
4. As regards the date on which the statement of defence was filed, there is was no objection made by the Appellant. The filing of an amended statement of defence can be done at a later stage by the Respondent. He cannot be precluded from doing it if matters have to be considered in the light of other pleadings that may

have been filed in the meantime, like the statement of defence of the Co-Respondent in the present case.

5. The fact that the statement of defence was initially filed within the delay of 21 days, the point raised by the Appellant is baseless.
6. More importantly, the exchange of the pleadings is a procedural matter which this Tribunal has time and again stated is a matter which should not dictate the substantive aspects of the case, the more so that there is nothing on record to show that prejudice will be caused to any of the parties.

In view of the above, the points raised by the Appellant are not upheld. We order the appeal proceeds on the merits and any attempt to delay further the determination of this appeal will not be condoned.

Delivered by:

**Mrs. Vedalini Bhadain, Chairperson** ...

**Mr. Marc Reynolds Guiton, Assessor** ...

**Mr. Pravin Kumar Manna, Assessor** .....

Date:

18<sup>th</sup> October 2014