

IN THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 1474/17

In the matter of:

Manoj Dudhee

Appellant

v/s

Municipal Council of Curepipe

Respondent

RULING

1. This is an appeal against the decision of the Municipal Council of Curepipe for refusing a Building and Land Use Permit to the appellant for an extension and for the conversion of part of a building to be used as an aluminium workshop and for the use of electric motors at Emilie Sauzier Street, Curepipe. Counsel appearing for the Respondent moved for the Tribunal to find *“that the grounds of appeal as couched do not amount to grounds of appeal at all on account of the lack of precision and being vague, so that these grounds would not satisfy the requirement of the Act [Environment and Land Use Appeal Tribunal Act 2012].”*The motion was resisted by Counsel appearing for the appellant. We have duly considered the oral as well as written submissions of both Counsel in the matter.
2. The proceedings of the Tribunal are regulated under **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]. The notice of appeal deposited before the Tribunal on the 21st August 2017, is clearly not exactly in the form set out as per the schedule of the ELUAT Act. However, since we are not to be overly technical, we are ready to look at the substance of the notice of appeal and not to the form.

3. It is the first contention of the Respondent's counsel that the notice of appeal demands that the grounds of appeal be set out concisely and precisely and since the notice of appeal in the present case does not contain any grounds of appeal, it does not meet the requirements of the law. While, again, we agree in principle with the contention of Learned Counsel for the Respondent, we believe that this would be an unduly legalistic approach if we were to adopt this stand. Agreeably, the notice of appeal does not contain the grounds of appeal, which is a big omission on the part of the Appellant. By virtue of its very nature, a notice of appeal is meant to notify the other party and the Tribunal of the grounds of challenge of the impugned decision. However, we are ready to import the grounds of appeal as set out in the Statement of case of the Appellant since the notice of appeal as filled out by the Appellant makes mention that "These are set out in the statement of case herewith attached" under the sub-heading of "Grounds of Appeal". This Tribunal is ready to adopt a less formal and less technical approach in this respect. It is also clear to us that there are three grounds of appeal set out in the second page of the statement of case of the Appellant, with every ground being couched under a separate paragraph.

4. We now come to the substance of the grounds of appeal as couched in the statement of case. It is the contention of the Respondent that the grounds of appeal must be drafted "concisely and precisely" so that the other party knows exactly what case it has to meet. Under the first ground of appeal as per the Statement of case, it is averred "*In refusing to grant the permits to the Appellant, the Municipal Council of Curepipe has acted unfairly, arbitrarily, most unreasonably, in an unprofessional manner and in bad faith and its decision is thereby flawed and should be overturned.*"

5. The abovementioned ground of appeal, is infact, in our view, too vague. A lot of descriptive terms have been used to describe the manner in which the Council has acted to refuse the granting of the permit but this does not amount to a proper ground of appeal in law. Infact the way the ground of appeal has been drafted is more in line with the grounds for an action for judicial review. It was argued by Counsel for the Appellant that the grounds of appeal are clear and that the first paragraph is clear "that there was bad faith, unprofessional manner, arbitrary". We do not share the view of learned counsel appearing for the Appellant on this score. In law, every ground, be it bad faith or unprofessional manner, to cite a few examples from the list set out by the Appellant, must be sufficiently particularized in the grounds of appeal and later substantiated. By simply stating that in refusing to grant the relevant permit the Council acted in a list of ways, in this context, does not amount to clear and concise drafting of the grounds. In our view, it leads to more confusion the moreso as the several grounds for challenge under the first ground of appeal do not appear to be substantiated in the body of the statement of case. Under the sub-heading "Under reason 1", reference here possibly is being made to the first reason for refusal provided by the Council, there appears to be no correlation between the issue of noise raised and the first ground of appeal as couched. There is also no such correlation with the averments made under sub-headings "under reason 2" and "under reason 3" either. In what way the Council acted in an unprofessional manner or in bad faith, amongst others, or that its decision was flawed is unclear from the ground of appeal as drafted. We therefore dismiss this ground of appeal for being too vague and imprecise: **Ramkhalawon v Rambarun [2012] SCJ 348.**

6. The second ground of appeal is "*The reasons given by the Municipal Council of Curepipe for not granting the permits are untenable, unreasonable, unfair, arbitrary, unwarranted and misconceived and unsupported by all the facts and evidence.*" In the letter of refusal dated 28th July 2017, the three reasons given for refusal of the BLUP are: firstly, that the activity will result in noise nuisance which will be detrimental to the immediate neighbourhood where there is residential settlement at the rear; secondly, that the activity will result in vehicular hazards at the

junction/entrance of a residential area; finally, objections have been received from immediate neighbours.

7. We have duly analyzed every element raised within the second ground of appeal and it is again unclear which reason or reasons precisely are untenable, unreasonable, unfair, arbitrary, unwarranted and misconceived. The three grounds of refusal provided by the Council appear to be based on planning considerations. The broad spectrum of qualifiers for this ground of appeal does not add precision in any manner whatsoever, in our view. The second ground of appeal, in fact, appears to encompass too many elements within itself such that it lacks clarity and precision. If we are to accept such grounds within a ground, it will lead to not only unfairness towards the Respondent but may also lead to the Tribunal acting beyond its jurisdiction. In the case of Ramsamachetty v The Queen [1872] MR 15, the Court decided "*If we were to sustain such an argument it is very clear that reasons of appeal would be so framed henceforth as to conceal the grounds as much as possible, and would lead to great abuses in practice.*" We agree with this ratio and therefore, dismiss this ground for lacking in precision and for concealing the grounds.
8. The third ground of appeal as per the statement of case is "*The Permits and Business Monitoring Committee failed to act in a transparent, professional, impartial, reasonable and fair manner in assessing the applications of the Appellant and at the hearing. The Committee failed to take all relevant facts into consideration and wrongly took into account improper one.*" The Committee has given three reasons *supra* for refusing the application. This ground again lacks precision as to why the Appellant has averred that the respondent acted in the ways that he feels it has acted. In any event, we are of the view that the way this ground has been drafted, it seeks to challenge the decision-making process in which the PBMC has proceeded in assessing this application and this can only be challenged by way of judicial review. The grounds for challenge contained within this ground of appeal has been drafted as such and if we were to entertain such grounds, it would be tantamount to the Tribunal acting beyond its powers. This ground is therefore dismissed.

9. For all the reasons set out above, we believe that the preliminary objection of the Respondent is with merit. The appeal is therefore dismissed. No costs.

Ruling delivered on 17th October 2019 by

Mrs. J. RAMFUL
Vice Chairperson

Mr. SAULICK
Assessor

Mr. MONAFF
Assessor