BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 1488/17

In the matter of :-

Ameeka Ramjuttun and Ors

Appellants

v/s

Municipal Council of Vacoas/Phoenix

Respondent

IPO

Mahanagar Telephone (Mauritius) Ltd

Co-respondent

RULING

1. At the outset of the case, Learned Counsel appearing for the Co-respondent raised a plea in limine to the effect that when an application has been **approved** by any local authority under **Section 117 (7) or (8) of the Local Government Act 2011**, there is no right of appeal by anybody to this Tribunal. And in the alternative, he also stated that the appeal is outside the prescribed statutory delay. Counsel for the respondent joined in the motion. The motion as resisted by Counsel for the Appellant.

2. **Section 117(14) of the Local Government Act 2011** 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 essence of the submissions of Learned counsel for the Co-respondent was that the decision of the Council is only appealable by the applicant where an

application of Building and Land Use permit has <u>not</u> been approved. The appellants do not fall within the meaning of 'person aggrieved' and hence cannot lodge an appeal. He made reference to **S.117 (7) (b) and (8) (b)** of the LGA, both subsections of which refer to notification in writing in the case of a refusal of the BLUP to the applicant with reasons for the refusal.

3. While the wording of the law has in fact been correctly cited by counsel for the co-respondent, in our view, the law should be read in its totality. Counsel referred to that part of the law which dealt with the situation whereby a person sought to apply to the Council for a BLUP and the recourse that he, or she, may have should his, or her, application be rejected. From our reading of **Sections 117 (7) (b), (8) (b) and (12) of the Local Government Act,** these provide for the various instances when a person's application for a BLUP may be rejected. That is why the foregoing sections of the law stipulate that in such scenarios where the person who has not been granted the BLUP and is therefore aggrieved by the decision of the Council, can appeal.

4. The law in relation to the granting of BLUPs and the procedure for appeal are regulated by several Acts. The **Local Government Act 2011** should be read in conjunction with **The Town and Country Planning Act** and **the Environment and Land Use Appeal Tribunal Act 2012. Section 7 of the Town and Country Planning Act as amended by the Environment and Land Use Appeal Tribunal Act 2012** on Building and Land Use Permit [BLUP], originally referred to as Development Permit referred, stipulates *"<u>Any person</u> aggrieved by a decision of a local authority under this section may appeal to the Tribunal in accordance with the Environment and Land Use Appeal Tribunal Act 2012"* [stress is ours].

5. Therefore, when the law is read in its totality it can be clearly seen that an aggrieved person can be any person who feels aggrieved by a decision of the Council, whatever be that decision. In our view, it is for this reason that there exists a mandatory legal requirement in the form of notification procedure, which allow for people in the vicinity to take cognizance of the proposed developments so that they may raise objections if they so wish and their right to appeal is also safeguarded under the law. It would be rather surprising if the legislators catered only for one category of people, that is, those who stand to benefit from a development and not for those who would be prejudiced by same. We are therefore not convinced by this point raised by the Co-respondent. It is accordingly set aside.

6. On the second point raised by Counsel for the Co-respondent, which is that the notice of appeal has been lodged outside the prescribed time limit. 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, <u>not later than 21 days from the date of the decision under reference being notified</u> to the party wishing to appeal."* [The stress is ours].

7. The notice of appeal clearly shows that the appeal was lodged on the 21st September 2017 and the date of notification of the decision as inserted by the Appellants at paragraph 2 of the notice of appeal is the 28th August 2017. The onus to provide evidence of the date of notification was on the Appellants, which they did not provide. It is to be noted that it is not contested by the appellants that the appeal was lodged at the Tribunal 25 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 appeal is not frivolous and that the Tribunal is entitled to act with less formality and technicality. He also submitted that the point is premature and mentioned that it is a question of health of the appellants. Although there is nothing in the pleadings regarding health issues of the appellants, we note at paragraph 4 of the Statement of Case of the appellants, an averment is made that the appellants have objected to the development on the basis of "the numerous hazards and social and medical issues" the project may be having on the residents

8. 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 *"<u>shall</u>...be brought"* and *"<u>not later than</u> 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.

9. We note that although the Appellants appeal is outside the prescribed time frame, and this is contested by them, there was never any motion for leave to appeal outside the time limit and no reason has been provided as to why the appellants lodged their appeal outside the time frame. It is infact well settled that the golden rule regarding delays governing appeals is 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.

10. 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 **Ramtohul 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.

11. 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 Co-respondent and the Respondent. The appeal is set aside. No order as to costs.

Ruling delivered on 12th July 2019 by

Mrs. J. RAMFUL	**Mr. SOYFOO**	**Mr. AUBEELUCK**
Vice Chairperson	**Assessor**	**Assessor**