

IN THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 1648/18

In the matter of:

Fine Crush Ltd

Appellant

v/s

**The Ministry of Social Security, National Solidarity and
Environment and Sustainable Development
(Environment and Sustainable Development Division).**

Respondent

RULING

1. The present appeal is against the decision of the Respondent for having refused the granting of an Environment Impact Assessment Licence ["EIA Licence"] for the setting up of a proposed Dry Mix Plant in La Tour Koenig Industrial Zone, La Tour Koenig, Pointe aux Sables. The letter of refusal dated 19th June 2018 under the signature of Mrs. Ng Yun Wing, the Director of Environment, stipulates that following the examination of the application by the EIA Committee "*...this is to inform you that in accordance with section 23 (2) b of the Environment Protection Act, the application **has been rejected** in view of site not satisfying locational criteria and being a potential source of pollution by way of dust and noise". In response to the Notice of Appeal and the Statement of Case of the Appellant filed at the Tribunal on the 10th July 2018, the Respondent filed a Statement of Defence on the 30th July 2018 containing a preliminary objection as follows:
*"Respondent moves that the appeal be set aside inasmuch as it has been wrongly directed against it."**

2. The motion was initially resisted by the Appellant's Counsel but subsequently he reconsidered his stand and moved for an amendment of the pleadings so as to join the relevant Minister as a Respondent to the appeal. The motion was resisted by the Respondent's Counsel and the matter was argued. We have duly considered the submissions of both Counsel.

3. Under **section 4 of the Environment and Land Use Appeal Tribunal Act 2012**, the Tribunal has 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) or 25 (1)..." [the stress is ours]

4. The Respondent is styled as *"The Ministry of Social Security, National Solidarity and Environment and Sustainable Development (Environment and Sustainable Development Division)"* in the Statement of Case. In the Notice of Appeal of the Appellant at paragraph 1 that the decision being appealed against is inserted as that of the *"Ministry of Social Security, National Solidarity, and Environment and Sustainable Development"*. However, in Annex A attached to the Notice of Appeal where the three Grounds of Appeal are set out, reference is made to *"The Minister's decision"* at every ground. Likewise, under the grounds of appeal at paragraphs 6, 7 and 8 of the Statement of Case, the averments are clearly drafted seeking to challenge the ministerial decision of rejecting the application for EIA licence. There is no doubt in our mind, from a reading of the Statement of Case that the impugned decision sought to be challenged is that of the Minister for having rejected the application and the Appellant has put forward reasons for the challenge.

5. Despite the omission of the relevant Minister in the heading of the Statement of Case, ex-facie the averments in the Grounds of Appeal of the Statement of Case, we are of the view that the Appellant had at all material times intended to challenge the decision of the Minister. In terms of timeline, the amendment cannot be said to be done outside any prescribed time frame because the challenge of the Appellant was against the Minister's decision at the outset itself, when the Statement of Case and the Notice of Appeal were lodged. In this context we subscribe to the Tribunal's reasoning in the case of Rawoo Mexxy Farm Ltd v/s Ministry of Social Security, National Solidarity and Environment and Sustainable Development [ELAT 1531/17], *"Pleadings, that is, what is in substance being pleaded, may infact be amended for the purposes of clarifying the issues that are being canvassed. Likewise in the case of parties, where it is the case of a simple misnomer, courts tend to allow amendments as the parties had no doubt in their minds against whom the case was lodged: Rodriquez v R.J. Parker [1967] 1 Q.B 116."*
6. For all the reasons set out above and in view of the fact that the Tribunal is empowered to proceed with less formality and technicality than a court of law, the motion for amendment is allowed.

Ruling delivered on 2nd September 2019 by

Mrs. J. RAMFUL-JHOWRY

Vice Chairperson

Dr. Y. MIHILALL

Member

Mr. H. MEETOO

Member