

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

**ELAT 1817/19**

**In the matter of:**

**Mario Chette**

**Appellant**

**v/s**

**The Municipal Council of Vacoas-Phoenix**

**Respondent**

**RULING**

1. The present appeal is against the decision of the Respondent for having refused the granting of a Building and Land Use Permit ["BLUP"] for the excision of a plot of land of an extent of 44 m<sup>2</sup> from a greater lot of 91.70m<sup>2</sup> as per title deed bearing TV 6987 No.34 & TV 7036 No.9 for residential purposes. At the outset the Respondent raised a plea *in limine* to the effect that "ex-facie the documents filed, it appears that the present Appeal has been lodged outside the delay prescribed by law."
  
2. The appellant, despite being explained that a point in law was raised, chose not to be legally represented for his own reasons. The Respondent's Counsel argued that as per documents annexed to the Appellant's notice of appeal and averments in his statement of case, the Council's refusal letter dated 12<sup>th</sup> April 2019 was communicated to the Appellant on the same day. His notice of appeal was received on the 10<sup>th</sup> May 2019, which is well outside the prescribed delay of 21 days. The appeal should therefore not be entertained by the Tribunal. The Appellant stated that he had nothing to say but wished the Tribunal to decide on the issue.

3. The proceedings of the Tribunal are regulated by **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."*
4. This provision has been drafted in mandatory terms using the words "shall...be brought" and "not later than 21 days", which show that the intention of the legislator was in fact to give to the Tribunal in this specific context no discretion to travel outside the time frame provided by the law as far as the lodging of the appeal is concerned. We believe that the drafting language used by the legislator under **section 5(4) (a) of the ELAT Act** is mandatory. The Appellant had no explanations to give as to why his appeal was lodged outside the time frame.
5. For all the reasons above, we find that the point is well taken. Ex-facie the pleadings of the Appellant and the evidence on record supports the submissions of the Respondent. The motion is granted and the appeal is set aside. No order as to costs.

Ruling delivered on the 5<sup>th</sup> September 2019 by

Mrs. J. RAMFUL  
Vice Chairperson

Mr. G. LEPOIGNEUR  
Member

Mr. M. GUITON  
Member