BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 647/14

In the matter of :-

Seevamootoo Soobrayen

Appellants

v/s

District Council of Flacq

Respondent

IPO:

Christian Leventard

Co-Respondent

RULING

1. The Counsel for Respondent raised a point in law and moved that the appeal be set aside in as much as the appeal lodged by the appellant on 3rd April 2014 is against an application for Building and Land Use Permit for an automotive workshop whereas the decision that was and had to be taken by the Council was in respect of installation of electric motors to be used in an existing automotive workshop at Boulet Rouge, Central Flacq. The point of the respondent is that being given that the appellant has not appealed against the decision of the Council, the respondent moves that the appeal be set aside.

2. We have duly considered the submissions of all counsel on the issue and do not intend to overburden this ruling with the submissions except where we deem it necessary to do so. The Appellant lodged a notice of appeal before the Tribunal on the 4th April 2014 making specific reference at paragraph 1 of *" letter dated 18/3/2014 MOI / 0038/2013"*.

At paragraph 2 of the notice the date of notification of decision inserted is *"18/03/2014"* and annexed to the notice of appeal is a letter emanating from the District Council of Flacq under the signature of the Acting Chief Executive dated 18 March 2014 which cites their reference as *"MOI/ 0038/2013"*. In this letter which is addressed to the appellant, Mr. Seevamootoo Soobrayen, reference is made to his attendance at the meeting held in connection with the proposed development, it is mentioned at the second paragraph *"This is to inform you that the Executive Committee at its sitting of 03 march 2014, has approved the application for Building and Land Use Permit for the automotive workshop (employing less than 10 persons) at Printaniere Street, Boulet, Central Flacq."* At the third paragraph of the letter, the appellant is informed that any person aggrieved by the decision of the Local Authority may appeal to the Environment and Land Use Appeal Tribunal.

3. We believe that ex-facie the record, from the notice of appeal lodged and the letter emanating from the Council quoting their reference specifically which tallies with the reference inserted by the appellant in his notice of appeal, the mistake emanates from the Council for having wrongly set out the nature of the proposed development as an application for BLUP for an automotive workshop. The Appellant, having made reference to this letter in his notice of appeal, seems to have placed reliance on this letter to lodge his grievance by way of appeal, as he was informed in the letter. In our view, the Council cannot take advantage of its mistake and thereby claim the the appeal is an invalid one. If this is accepted, not only would it deprive the appellant of his right to appeal without the Tribunal coming to an informed view on its merits , but it would be tantamount to this Tribunal condoning the laches of the respondent to the prejudice of the appellant's rights.

4. True it is that the Respondent adduced evidence to show that the application form of the Co-respondent was for application of BLUP for permission to use electric motors in an existing workshop, and the minutes of the hearing at the Council also purports to show that the Chairman had explained the nature of the proposed development as

the installation of electric motors to be used in an existing automotive workshop. However, what can be gathered from the same document is that the grievance of the appellant is against the nuisance created by the operation of the workshop. We have to weigh up the position of both parties. If we are to look at the nature of the appeal, which is one where the appellant feels aggrieved by the nuisance that has come about with the operation of the automotive workshop, it is clear that his intention to appeal was against any form of nuisance intrinsically generated by the proposed development. The cause of action of the Appellant has to be based on the impugned decision and if the impugned decision has been set out wrongly by the decision-maker, this cannot prejudice the Appellant.

5. On the face of it, this appeal appears to have some merit and can certainly not be said to be either a frivolous or a vexatious one. For all the reasons set out above, the motion of the respondent is set aside. The Tribunal is ready to hear the case on its merits provided the appropriate motion for amendment is made by the Appellant.

Ruling delivered 8th March 2019 by

Mrs. J. RAMFUL
Vice Chairperson

Dr. M. Somaroo
Member

Mr. H. Meetoo
Member