

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 1225/16

In the matter of :

Mr. Swaley Chummun

Appellant

v.

District Council of Pamplémousses

Respondent

In the presence of:

Mrs. Revathi Sunassee

Co-Respondent

Ruling

The hearing in the present case started with a plea in limine raised by the Co-Respondent and arguments offered thereon and had reached the stage of a ruling being reserved. Subsequently, motion was made by counsel for the Respondent and by Attorney for the Co-Respondent, that the appeal be set aside following the Supreme Court judgment of Baumann v. District Council of Riviere du Rempart i.p.o Syndicat des Co-Propriétaires de Savannah Sparrow Residence and Ors. [2019] SCJ 311. The stand of the appellant to this, after several postponements, has been for hearing and/or arguments. We have considered the respective positions of the parties on the matter.

It is noted that ex facie the statement of case, the Appellant has made objections to the Respondent, as the authority granting permits, against the proposed development. The Respondent nevertheless granted a BLUP to the Co-Respondent. The Appellant has now appealed to this Tribunal in the capacity of an objector.

The Supreme Court has spelt out in the judgment of Baumann v. District Council of Riviere du Rempart i.p.o Syndicat des Co-Propriétaires de Savannah Sparrow Residence and Ors. [2019] SCJ 311 that : “ *A proper construction of these provisions [reference being made here to sections 117(14), 117(7)(b) and 12 of the Local Government Act (LGA 2011)] conveys the clear and plain intention of Parliament: only an aggrieved party can appeal to the Tribunal and an aggrieved party is one who has been notified that his application has not been approved [vide sections 117(7)(b) and 117(8)(b) of the LGA 2011]. The legislator has not provided for any other person to have the possibility of challenging the granting of the BLUP to an applicant before the Tribunal.*”

Their Lordships furthermore stated that: “*Obviously, any other person, a neighbour, like the present appellant for instance, who feels aggrieved by the granting of the BLUP may have*

recourse before another court, but certainly not before the Tribunal which does not have jurisdiction to consider and to determine complaints from those who are no 'aggrieved persons' within the definition of the Local Government Act 2011."

The Environment and Land Use Appeal Tribunal (ELUAT) is an inferior jurisdiction to the Supreme Court. Based on the principle of *stare decisis*, it is bound and must abide by the decision of the Supreme Court.

In the present matter, the Appellant is an objector to the granting of the BLUP by the Respondent to the Co-Respondent. In this respect he is not an "aggrieved person" within the definition of section 117(14) of the Local Government Act and as interpreted in the judgment of Baumann (*supra*).

Furthermore, the more recent legislative amendment made to section 117(5) of the Local Government Act by the Finance (Miscellaneous Provisions) Act 2020 has defined a 'person aggrieved' as meaning a person whose application for an Outline Planning Permission or a BLUP has not been approved by a local authority.

This legislative amendment is in line with the Supreme Court Judgment of Baumann (*supra*). The Appellant does not fall in the category of 'aggrieved person' as defined above. As such, this Tribunal does not have the jurisdiction to hear the matter and the appeal cannot proceed before the present jurisdiction.

The motion of the Respondent and that of the Co-Respondent are granted.

The appeal is set aside.

No order as to cost.

Delivered by:

Mrs. V. Phoolchund- Bhadain, Chairperson

Mr. Marc Reynolds Guiton, Member

Mr. Juswansing Aubeeluck, Member

Date:

2nd September 2020