

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

**ELAT 1590/18 and 1594/18 (Consolidated)**

**In the matter of :**

**Mrs. Bharatee Chamroo (Represented by son Adheesh Chamroo)**

**Appellant**

**v.**

**District Council of Pamplémousses**

**Respondent**

**In the presence of:**

**Mr. Chandan Kowlessur**

**Co-Respondent**

**AND**

**In the matter of :**

**Mr. Keerenpersad Bhogun (Represented by Mr. Dashween Bhogun)**

**Appellant**

**v.**

**District Council of Pamplémousses**

**Respondent**

**In the presence of:**

**Mr. Chandan Kowlessur**

**Co-Respondent**

**Ruling:**

The matter was called in the course of formal matters for the Appellant to take a stand in the light of an earlier ruling delivered by the Tribunal. The Appellant's stand, as expressed in an e mail received on 26 August 2020 from the representative of the Appellant, is that it was

the District Council of Pamplémousses itself that had informed him of the recourse before the ELUAT and that he wished to 'present his case'.

This Tribunal is bound by the Supreme Court Judgment of Baumann v. District Council of Riviere du Rempart i.p.o Syndicats des Co-Proprietaires de Savannah Sparrow Residence and Others [2019 SCJ 311], which made a pronouncement on who is an "aggrieved person" within the meaning of section 117(14) of the Local Government Act 2011. This is as follows:

*" A proper construction of these provisions [reference being made here to sections 117(14), 117(7)(b) and 12 of the Local Government Act 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 not '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 she 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' above. This Tribunal does not have the jurisdiction to hear the appeal.

The appeal cannot proceed before the present jurisdiction and is therefore set aside.

No order as to cost.

Mrs. V. Bhadain  
Chairperson

Date:

26 August 2020