

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 1158/18

In the matter of :

Iqbal Beeharry

Appellant

v.

Municipal Council of Port Louis

Respondent

In the presence of:

Jaami'ah Na'eemah Association

Co-Respondent

Ruling

The preliminary objection raised by the Respondent in its statement of defence is that the Appellant has no locus standii to proceed with the present appeal in the light of the recent judgment of Baumann v. District Council of Riviere du Rempart 2019 SCJ 311, and the Respondent moved that the appeal be set aside. This motion is made at the formal stage of the proceedings.

The Appellant moved for arguments to be heard on the objection raised. This motion amounts to asking the Tribunal to hear evidence and/or arguments on whether the Appellant has locus standii. At the outset, it transpires from the notice of appeal lodged that the Appellant had objected to the granting of a BLUP to the Co-Respondent and his objection had been rejected by the Respondent which led to the present appeal against the latter's decision.

In the case of Baumann (supra) the Supreme Court made a pronouncement on who is 'an aggrieved person'. Their Lordships stated that "The Tribunal [which] does not have the jurisdiction to consider and determine complaints from persons who are not "aggrieved persons" within the definition of the Local Government Act 2011." This goes to the root of the jurisdiction of the Tribunal in respect of who can appeal. The ELUAT being of inferior jurisdiction, is bound and must abide by the above pronouncement of the Supreme Court. By entertaining a motion to hear arguments on the above point and from someone who is not an "aggrieved person" within the definition of the law, the Tribunal will allow an abuse of its own process.

The Appellant has also raised the point that the decision of the Tribunal in the matter of Peerthy v. Municipal Council of Vacoas-Phoenix (ELAT 1617/18) is subject to an appeal. The position of the Tribunal is based on the reasoning as expatiated above. The case of Peerthy (supra) may have been decided on similar reasoning. The present decision is based on the facts of the present case (namely on the status of the Appellant as it is described in the

notice of appeal). The jurisdiction of the Tribunal to entertain the appeal (or any motion related thereto) is to be exercised in compliance with the pronouncement of the Supreme Court, as dictated by the doctrine of *stare decisis*. For this reason, the motion for arguments cannot be entertained. The preliminary objection to the appeal raised by the Respondent is granted. The appeal is accordingly set aside.

~~Mrs. V. Phoolchand-Bhadain~~
Chairperson
Date:

2 July 2020 .