BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 1691/18

In the matter of:

1. **Carina Gounden**
2. **Oormila Sahodree**
3. **Yan Hookoomsing**
4. **Veersen Hurree**
5. **Ashok Subron**
6. **Moonsamy Gounden**

Appellants

v/s

Ministry of Environment and Solid Waste Management and Climate Change.

Respondent

In the presence of:

West Coast Leisure Ltd

Co-Respondent

RULING

1. The Tribunal delivered a ruling in this case on the 31st January 2019 on a motion for amendment of the pleadings made on behalf of the Appellants whereby they sought to amend the heading of their statement of case by adding a new party outside the statutory time frame following a plea *in limine* raised by the Respondent. The motion of the Appellants was set aside and they were asked to take a stand. It is apposite to note that the first part of the two-fold plea *in limine* raised by the Respondent was to the effect that ex-facie the appeal, the wrong party has been put as Respondent so that pursuant to **section 4 of the Environment and Land Use Appeal Tribunal Act**, the Tribunal has no jurisdiction to hear and determine the appeal.

I. CHRONOLOGY

2. The case was called pro-forma on the 27th February for the Appellants to take a stand. The Attorney representing the Appellants informed the Tribunal that the ruling of the Tribunal was being challenged by way of appeal before the Supreme Court and he moved for a stay of proceedings before the Tribunal. This was met with objection by the Co-respondent and the Respondent. The matter was fixed to be argued on the motion for stay of proceedings on the 25th April 2019. On that day the Attorney for the Appellants informed the Tribunal that they would not proceed with the appeal to the Supreme Court against this Tribunal's ruling and hence would no longer insist on the stay of proceedings. He moved to amend the pleadings by removing the first Appellant, which was granted. He also moved to amend the statement of case by adding as Respondent no.2 the Minister of Social Security, National Solidarity and Environment and Sustainable Development (Environment and Sustainable Development Division). This was met with objection from the Respondent and Co-respondent on the ground that the Tribunal had already delivered a ruling whereby the motion of the Appellants for adding a new party was set aside and that the motion of the Appellants would be tantamount to asking the Tribunal to sit on appeal of its own ruling. Following some exchanges between the Bench and the parties, the case was fixed to the following day for the Appellants to inform the Tribunal of their stand following the objections of the Respondent and Co-respondent.

3. At the sitting of the 26th April 2019, the Counsel then appearing for the Appellants reiterated the motion of adding a new party, that is, the Minister of Social Security, National Solidarity and Environment and Sustainable Development (Environment and Sustainable Development Division) to the case. The Tribunal delivered a ruling on the same day setting aside the motion of the Appellants' counsel. The latter moved to take a stand. At a subsequent sitting, he moved for a stay of proceedings pending the determination of the Supreme Court on the appeal that had been lodged against the ruling of the Tribunal. The Respondent and Co-respondent objected to the motion and the matter was argued.

4. We have duly considered the submissions of all counsel. We do not intend to overburden this ruling with the lengthy submissions of counsel save where we deem it fit to make any reference thereof. The issue as we see it is two-fold: whether the Tribunal has the power to stay proceedings and whether it should stay the present proceedings.

II. POWER TO STAY PROCEEDINGS

5. The lodging of an appeal has no suspensory effect, that is, an appeal does not operate as an automatic stay of the decision or the order of the court below. It has to be by way of application or motion by the party seeking to appeal. The **Environment and Land Use Appeal Tribunal Act 2012 ["ELUAT Act"]** provides at **section 6** that any party who is dissatisfied with the final decision of the Tribunal, relating to an appeal under **section 4**, as being erroneous on a point in law may appeal to the Supreme Court and that such appeals must be prosecuted in the manner provided by rules in respect of an appeal from the final judgment of a District Court in civil matters. No stay is provided for under **sections 36 and 37** of the **District and Intermediate Court (Civil Jurisdiction) Act ['DIC (CJ) Act']** which deal with appeals from the District Court to the Supreme Court. However, under **section 29** of the **DIC (CJ) Act** entitled **'No stay except on appeal',** it is provided "No judgment or execution shall be stayed, delayed, or reversed by any writ of error or *supersedeas*".

6. This Tribunal being set up by statute must operate within the ambit of the law, that is, the **ELUAT Act.** This means that the Chairperson and members, when determining an appeal, are guided by the statutory powers of the Tribunal to resolve the issues raised. If the case is one which falls within its jurisdiction, the Tribunal can make a determination as set out in the law. The issue at hand here, stay of proceedings, is one of inherent jurisdiction and it is recognized that courts have an inherent power to stay their proceedings. The provisions of the **DIC (CJ) Act**, however, offer little guidance as to the stay of proceedings before a Tribunal.

7. In **Goordial v/s Auckloo and Ors 1973 SCJ 34**, the Supreme Court held that, **the magistrate of the district court undoubtedly had a discretionary power to make or not to make an order for a stay of proceedings**. To be able to exercise his discretion however, he should have been put in presence of all the relevant facts and circumstances. Given that those facts and circumstances were not put before him, he had no choice but to refuse the application.

8. The equitable jurisdiction of a Tribunal was the subject-matter of appeal. In **Meetoo v/s Employment Relations Tribunal 2018 SCJ 133**, an application for judicial review on the decision-making process of the Employment Relations Tribunal where the only issue the applicant raised was that the Tribunal was wrong in concluding that it was not empowered to deal with the issue of reinstatement after termination of a contract of employment. Counsel for applicant (then appellant) argued before the ERT that whilst the Industrial Court had sole jurisdiction to deal with cases of unjustified dismissal under the Employments Rights Act, the dispute before the Tribunal was not one of unjustified dismissal but about reinstatement.However, the Supreme Court agreed with the Tribunal's view that it does not have any equitable jurisdiction empowering it to consider the issue of reinstatement. Also, such jurisdiction could only be conferred by specific provisions of its legislation.

9. The Counsel appearing for the Appellants has submitted a line of authorities in support of the contention that the Tribunal has inherent jurisdiction to stay proceedings. While we appreciate the principles contained therein, they do not support the proposition that Tribunals have an inherent jurisdiction to stay proceedings. Some of the authorities submitted were in respect of the Supreme Court which has very wide powers including the power to stay. Agreeably, the White Book provides for cases where english tribunals have a power to stay proceedings but such powers are clearly set out in their procedural rules. Typically specific instances are provided in the law where a stay is permitted in our jurisdiction. Section 20 of the Curatelle Act makes provision that any Court may on the application of the Curator, may stay any legal proceedings, Section 23 of the Insolvency Act stipulates as a rule that all proceedings to recover any debt payable in

the bankruptcy court may be stayed and Section 7 of the Court of Civil Appeal Act provides that any appeal made under the said act shall operate as an automatic of proceedings.

III. STAY OF PROCEEDINGS

10. The principles governing a stay have been stated in **Halsbury's Laws of England (4th Edition Vol 37 at paragraph 699:**

"Two principles have to be balanced against each other as to whether a stay of execution pending the appeal should be granted: first, that a successful litigant should not be deprived of the fruits of his litigation, and secondly, that an appellant should not be deprived of the fruits of a successful appeal."

11. In our view, there should be no stay unless there are good reasons for this course. In other words, a stay should be the exception rather than the rule and for such exception to be applicable, and a stay be granted, there should be very strong grounds put forward by the applicant. The court has to then proceed with a balancing exercise with the risk of granting a stay as opposed to the risks associated with not granting a stay.

12. In **Wilson v Church (1879) 12 Ch D 454** it was observed:

"***Where an unsuccessful party is exercising an unrestricted right of appeal, it is the duty of the court in ordinary cases to make such orders for staying proceedings under a judgment appealed from, as would prevent the appeal, if successful, from being nugatory. But the court will not interfere if the appeal appears not to be bona fide, or there are other sufficient exceptional circumstances."***

13. It is also apposite to consider which jurisdiction is best placed to exercise this discretion, theTribunal or the Supreme Court. We have it on record that the appellants have lodged an appeal against the ruling of the Tribunal. This Tribunal is

not privy however to the case or its merits before the Supreme Court. True it is that when considering an application for stay it is not the court or the Tribunal's function to assess the merits of the appeal however if *prima facie* the intended appeal is unmeritorious or there is no arguable appeal, as has been submitted by the Respondent and the Co-respondent, then it is unlikely that the application for stay will succeed. The Appellants may, agreeably, request a stay of proceedings if continuing with the case is likely to cause them grave prejudice or that a stay is desirable to ensure that related proceedings do not run parallel in different jurisdictions where one may have a bearing on the other but nevertheless this has to be done before the proper forum. The appeal court would be better placed to assess the merits of the appeal and therefore determine whether a stay is warranted.

14. The question of whether the appeal would be stifled if a stay is not granted is best determined by the court which is in the presence of the appeal and the objections to it. The stay should be ordered by the forum which can form a view on the *prima facie* merit of the appeal and carry out a balancing exercise to decide what prejudice, if any,is likely be caused to a party should the stay be granted or refused. We believe that the motion for stay should have been made before the Supreme Court, not before this Tribunal.

15. The Tribunal is being, in a way, called upon to do this balancing exercise on the basis of suppositions and conjecture. In the teeth of three different lines of arguments as regards the possible outcome of the appeal before the Supreme Court, we do not believe that we are well placed to do this balancing exercise. It is the contention of Counsel appearing for the Respondent as per **section 6(1) (a) of the ELUAT Act 2012** which states that any party who is dissatisfied with the final decision of the Tribunal may lodge an appeal to the Supreme Court, that the ruling of the Tribunal not being a final decision, cannot be appealed against. Counsel for the Co-respondent argued that the Appellants cannot proceed with their case before the Supreme Court as the jurisdiction of the Tribunal has not been properly seized. Counsel for the Appellants argued that the decision to appeal against the ruling of the Tribunal before the

Supreme Court is precisely because in the light of the ruling the case for the Appellants cannot proceed before the Tribunal.

16. In our view, these are issues which are to be canvassed on the merits of the appeal before the Supreme Court. These cannot form the basis of our decision for granting a stay. The Appellants' counsel has not advanced any reason as to why the motion for stay of the present proceedings was not made before the Supreme Court at the time of them lodging the appeal against the ruling of the Tribunal. Had an order for such stay been granted by the Supreme Court, the Tribunal being of lower jurisdiction would have abided.

17. The Tribunal cannot either be oblivious to the previous rulings it has delivered in the present appeal where it had condemned the attitude of the legal advisors of the Appellants and been critical towards any abuse being made of its process. A self-imposed stay by the Tribunal will entail the freezing of its proceedings for a lengthy period until determination of the appeal lodged before the Supreme Court. This will also lead to further delays, an undesirable state of affairs as regards the Tribunal's process and rights of the Respondent and Co-respondent.

18. We have also addressed our minds to the submissions of Counsel appearing for the Co-respondent and the reply of the Counsel for the Appellants on the issue of setting aside the appeal on the basis that the decision-making body not having been put into cause, the jurisdiction of the Tribunal has not been triggered. The Appellants' counsel argued that the issue at hand is the motion for stay of proceedings and that it was only in the course of submission on this issue that the Counsel appearing for the Co-respondent submitted that the present appeal must be dismissed for want of jurisdiction. The case is still at pro-forma stage, where the Respondent and Co-respondent have already filed their respective Statement of Defence wherein objections in law were taken to the effect that the appeal has been entered against the wrong party. The sequence of events has been such that the motion for amendment by the Appellants came during the exchange of pleadings and this has triggered a series of arguments thereafter. We are of the view that the fate of the

appeal should be considered after the closure of exchange of pleadings and having heard all parties. Since the issue is one of jurisdiction and the Tribunal has neither heard the Appellants nor the Respondent on the issue despite the latter having raised it as a preliminary objection in their Statement of Defence, the Tribunal would rather give due consideration to the arguments all parties have to offer by affording them the opportunity to do so.

19. We were referred to **Section 5(8) of the ELUAT Act 2012** which provides:

"The Tribunal may, upon consideration of the grounds of appeal set out in the notice of appeal and the objections made against the appeal, dismiss the appeal, where it appears to the Tribunal that it is trivial, frivolous or vexatious."

As stated in our previous ruling dated 31st January 2019, at paragraph 19, we believe *"the substantive issues of the case are within the competence of this Tribunal."* We would however, in fairness to all parties, rather hear the arguments on the issue of jurisdiction of the Tribunal on account of the appeal not having been directed against the proper party.

20. For all the reasons set out above, the motion for stay of the proceedings is set aside. The matter is fixed for arguments to be offered on the preliminary objection raised.

Ruling delivered on 27th July 2020 by

Mrs. J. RAMFUL-JHOWRY	**Dr. B. MOTAH**	**Mr. P. MANNA**
Vice Chairperson	**Assessor**	**Assessor**