

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

**Cause No.: ELAT 1768/19**

**In the matter of:**

**MR.NADISH SAJAN SAULICK**

**C/O MOONDRIKA VEER MOTHOREE**

**Appellant**

**v.**

**DISTRICT COUNCIL OF MOKA**

**Respondent**

**RULING**

**DETERMINATION**

The Appellant, as styled above, has appealed against the decision of the Respondent for having refused to grant an application for a building and land use permit (BLUP) for the construction of a residential building (ground and first floors) including a boundary wall along Le Flamboyant Road at Ripailles. Four grounds have been put forward by the Respondent for its decision and were communicated to the Appellant by a letter dated 15 February 2019. These are, firstly, that the site is located outside the settlement boundary as per the Outline Scheme of Moka Flacq. Secondly, the site lies within the buffer zone of a licensed poultry farm. Thirdly, no land conversion permit or Attestation from a Notary Public, as required by the Sugar Industry Efficiency Act, has been submitted. Fourthly, a reserve of 1.5 metres and a curb radius of 4.5 metres have not been observed along the common road.

The Appellant lodged the present appeal on the 1<sup>st</sup> March 2019 and raised the following grounds of appeal:

1. The Appellant was not afforded a hearing and the decision was taken unilaterally, contrary to the rules of natural justice

2. The Respondent was wrong to cause the sole land of the Appellant to remain undeveloped and useless.
3. There are several houses in the vicinity.
4. The Respondent has concealed the document from the Notary Public which was the basis of a second application made, as per the Respondent itself.
5. By not affording a hearing the Respondent deprived the Appellant of an explanation that is clear from the site plan that the Respondent did not understand the site plan submitted. This was not even a reason in the first application.
6. The decision of the Respondent is unfair, biased and wrong and should be quashed, reversed and/modified as justice of the case may require.

At the start of the hearing, objection was raised that the said Mr. Veer Moondrika be allowed to proceed with the appeal for two reasons, firstly, that the Appellant was not present and was not duly represented under a correct proxy and, secondly, the appeal was not properly signed by the Appellant at the time of the lodging of the appeal, nor was it signed by a duly authorized proxy.

We have heard the arguments of counsel for the respective parties on the matter. At the outset it is noted that the proxy produced as Document A on behalf of the Appellant refers to the authorization given by Mr. Nadish Sajan Saulick to the said Mr. Mothoree Moondrika Veer Chandrakumar *"to act on his behalf to do the application or building permit and to represent him in any other formalities concerning the approval the building permit at the District Council of Moka as the construction will be at Le Flamboyant Road, Ripailles."* Our reading of this 'authorisation' is not limited to the submission of the application only but for the purposes of other formalities as well. However, this proxy is limited to such formalities at the level of the District Council of Moka. The appeal against the Council's decision that ensues is a separate process and any representative has to be specifically mandated to represent an Appellant. The rationale for this cursus followed at the ELUAT (like before any other Court) is that such representation involves the adducing of evidence on behalf of the Appellant in the course of a hearing.

The objection raised by the Respondent also questions the lodging of the appeal. The Notice of appeal has been entered in the name of Nadish Sajan Saulick c/o Moondrika Veer Mothoree and bears the 'Appellant's signature'. It came out in the course of the hearing that this signature is in fact that of Mr. Mothoree, who did not sign 'on behalf of Mr Saulick. The Notice of Appeal, or all intents and purposes is that of Mr. Mothoree.

We find that the appeal contains an inherent defect. On one hand the Appellant was not present to proceed with the appeal, on the other hand, the person who was present before the Tribunal did not hold the power to represent him for the purposes of the appeal. But more importantly, the appeal had been wrongly entered: the signatory of the

Notice of Appeal was neither the Appellant nor his duly mandated representative. In addition even if the signatory held the proxy to lodge the appeal, he ought to have signed on behalf of Mr. Sajan Saulick. Finally, we observe that by designating a person under 'c/o' is far from an authorization to appear, it is may simply designate a person for the purposes of an address or destination.

For these reasons, we find that the objection raised on behalf of the Respondent is rightly taken. The appeal has been wrongly entered and it is set aside.

Delivered by:

Mrs. Vedalini. Phoolchund-Bhadain, Chairperson

Mr. Pravin Kumar Manna, Assessor

Mr. Juswansing. Aubeeluck, Assessor

Date:

2<sup>nd</sup> June 2020