

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 1745/18

In the matter of :-

Marie Clerette Grancourt

Appellant

v/s

District Council of Moka

Respondent

DETERMINATION

1. The present appeal is against a decision taken by the Council for having rejected the application of the Appellant for a Building and Land Use Permit for the construction of a building at ground floor to be used as cowshed at Plot 38, State Land, Grand Merlo. The grounds for rejection communicated to the Appellant in a letter 6th December 2018, which was duly received on 13th December 2018 as per the Appellant, are that

The Central Water Authority has recommended that there is need to protect and conserve the water resources and has accordingly reiterated the request to all stakeholders including the District Council not to consider such types of development:

- (i) *in order to prevent additional stress and deterioration of the quality of water of Midlands Reservoir (and eventually to La Nicoliere Reservoir which is fed by Midlands Reservoir through La Nicoliere Feeder Canal) being given that the subject site lies within its catchment area; and*
- (ii) *since it has been observed with much concern that the proliferation of algae is causing much harm to its water treatment processes due to excessive nutrients and as such the Central Water Authority is hereby taking remedial action by*

investing massively in rehabilitating and upgrading the Nicoliere Treatment Plant.

2. Despite submission of brief the number of heads has not been specified.

2. The Appellant's sole ground of appeal as per her notice of appeal is "Actually rearing animals (10) in a residential area and I have been warned **District Council of Flacq and Ministry of Environment** to relocate all animals. I have no other place to rear and keep the animals which are my only means of survival." As per her statement of case, she avers that the Ministry of Agro-Industry and Food Security has on the 28th May 2018 approved the construction of a cattle shed, watchman quarter and fencing on the plot allocated to her. This is supported by documentary evidence, annex 4 to her statement of case. Furthermore, as per her testimony, her case is that there are 4 other sheds which have been allowed construction in the vicinity, one of them having been put up this year.
3. The undisputed evidence from the Council is that the site lies within the catchment area of Midlands Dam, which is considered an ESA, environmentally sensitive area. It is also undisputed that the land *in lite* is State Land which has been taken by the Appellant on lease from the Ministry of Agro-Industry and Food Security for live-stock production. As per the Appellant's version she was originally given lot no.25 and later given lot.38, which the subject-matter of the present appeal. The lease agreement, Annex 2 to the statement of case, stipulates at **Article 3(b)** that the Lessee should obtain all necessary clearances and permits from the relevant authorities in accordance with the relevant laws of Mauritius including a Preliminary Environment Report ["PER"] from the Ministry of Environment prior to undertaking any activity. The Appellant stated in cross-examination that she did not have the required PER.
4. The Appellant was not granted a clearance from the CWA. The representative of the Council, produced a letter emanating from the CWA dated 27th July 2017 and addressed to the Chief Executive of the Council stating the reasons why the CWA cannot give a clearance. The **Central Water Authority** has expressed concerns on the proposed development since the site lies in the catchment area of Midlands Reservoir

where there are concerns of water pollution due to the rise in the level of toxic microalgae and its consequences as well as the high cost implications regarding the water treatment. The letter made reference to a meeting held at the CWA on 25th July 2017, the notes of which were also produced by the representative of the Council as Doc B, whereby in view of the pollution issue and the need for conservation of the water quality at Midlands Reservoir was to be given utmost consideration in the national interest, the District Council was requested to stay action on all application until further notice. The meeting was held in the presence of stakeholders such as the Council of Moka, the Ministry of Agro-Industry and Food Security, Ministry Of Health and Quality of Life, Ministry of Housing and Land, ministry responsible for environment matters and the Water Resources Unit.

5. The representative of the Council, Mr. Hemraj, testified to the effect that all applications have been stayed due to the growing concerns of water pollution. Any discharge of water from these sites where rearing and breeding are taking place around the reservoir may ultimately reach the reservoir and may have an adverse effect on the quality of the water of Midlands Reservoir such as proliferation of algae as has been noted in reservoirs in other parts of the island. He stated that as far as the District Council of Moka is concerned since the stand of the CWA has been known, no applications for BLUP have been granted. When it was put to him in cross-examination that some new sheds were being built, he explained that they were not permits granted by the Council of Moka but that he could not answer for the other Councils as some areas fall outside the jurisdiction of the Council of Moka. He stated however, and this is also confirmed in Doc A, that alternative suitable sites will be identified for these activities, such as livestock production, goat and cattle rearing, to be relocated. For the time being, from our understanding, conservation and protection of the Midlands Reservoir is of utmost priority. The Council's representative also testified that the subject site is located close to rivers and rivulets which may have an adverse effect on the water quality such as proliferation of algae due to any wastewater discharge in the environment thereon. We believe that the reasons that motivated the Council to reject the application on the basis of the non-clearance of the CWA was well-motivated since it is a question of national interest, national health and safety.

6. **Policy EC2** of the **Outline Planning Scheme of Moka-Flacq District** also lays stress on the fact that the economic treatment of water to render it safe for human consumption is of paramount importance to health and quality of life. An analogy can be drawn with development proposals within the areas near dams that should not normally be permitted unless the developer produces written approval from the **Water Resources Unit/Ministry of Public Utilities** and the **Sanitary Authority** that the proposals do not pose a threat to the quality or quantity of surface or ground water resources. Furthermore, the **Environmental Guidelines No. 29** on cattle rearing also recommend that livestock farms should not be located within any *Environmentally Sensitive Area (ESA)* and its prescribed buffer zone as per *ESA Study 2009* such as wetland, steep slope and in areas that are likely to be affected by hazards such as inland flooding, landslide and storm surges, amongst others. The Midlands Reservoir is considered an ESA, where livestock farming should not be allowed.
7. We believe that the apprehension against the development (rearing of cattle) expressed by the **CWA** is concordant with **Policy EC2** of the **Outline Planning Scheme**. The Respondent's refusal in granting the application despite the purpose of the Lease Agreement of the Appellant with the Ministry of Agro-industry is well-motivated. Public health and safety take priority. The high cost involved in water treatment of such water bodies due to water pollution is a factor that cannot be disregarded. It would be counter-productive if on the one hand rearing and breeding were allowed in such places which may pollute the reservoirs and on the other the Government is having to invest high amount of public funds in water treatment. A proper assessment of the development proposals of the type before us, in view of the circumstances of this case, has to be based on the risks of environmental degradation and to water conservation.
8. For all the reasons set out above, we believe that the Council was correct in its decision. The Ministry of Agro-Industry and Food Security appears to have in the pipeline a project of relocation of the sites leased for breeding activities which the Appellant will have to look out for. The appeal is otherwise set aside. No costs.

Determination delivered on the 10th August 2021

Mrs. J. RAMFUL-JHOWRY
Vice Chairperson

Mr. S. MOOTHOSAMY
Member

Mr. R. SEETHUL
Member

