

IN THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

[IN CHAMBERS]

ELAT C1153-2/16

In the matter of:

Abdool Hamid Hossenkhan

Applicant

v/s

**A & N Hayat Imports Ltd,
represented by Mr. Mahmad Afize Soobye**

Respondent

In the presence of:

The City Council of Port Louis

Co-respondent

JUDGEMENT

1. This is an application for an interlocutory injunction sought by the applicant to stop the construction of a building which will serve as a hardware shop next to his property pending the determination of the main case. The co-respondent ('The Council') is the authority that granted the Building and Land Use Permit ("BLUP") to the respondent for construction of a hardware shop and store on a portion of land situated at No.6 Municipality Street, Port Louis.

2. I have duly considered the affidavits and documents filed as well as submissions of all counsel and attorney. The applicant is praying for an order in the nature of an injunction ordering “the Respondent and/or his agents and/or his agents and/ or prepose/s to stop with the construction on the portion of land situate at No.6 Municipal Street, Port Louis pending the decision of the appeal case before the Environment and Land Use Appeal Tribunal”. The interim injunction prayed for was set aside on the basis that there was simply an averment of great hardship that will be caused to the applicant if the respondent continued with the construction without providing any evidence of the hardship or any particulars to serve as proof in what way the construction of the building caused hardship to him.

3. There is no averment or evidence produced by the applicant to show that there is any serious issue to be tried in the main case. An injunction is not a cause of action but a remedy, sought by an applicant to prevent the commission of an unlawful act. There is no averment as to the ‘unlawful act’ or any actual or apprehended breach of planning control or of the planning instruments. The Respondent has been duly granted a BLUP by the Council. The onus is therefore on the applicant to show in what way there is a serious issue to be tried in that the proposed development is devoid of planning merits albeit that the central issues will be debated in the main case. The applicant simply averred that he was suffering from great hardship and prejudice. I have not been enlightened as to how the applicant will be prejudiced by the development. The Respondent on the other hand averred in its affidavit dated 30th January 2017 averred that the items that will be sold in the hardware shop are accessories used in the manufacture of furniture such as screws, drawer slides, handles, hinges amongst others and that it does not sell electrical products, plumbing products, paint, wood, plywood or melamine sheets, iron bars, cement. The hours of operation will be from 9 am until 4 30 pm on weekdays and from 9am until 12 30pm on Saturdays only. The site *in lite* is found along Municipality Street Port Louis which is a very busy, highly motorized street with a high amount of commercial development.

4. The balance of convenience clearly lies in favour of the respondent. Apart from the applicant not having provided any undertaking in damages, for which admittedly there was no motion by the respondent, the applicant has not submitted on the nature of the hardship or prejudice which would be caused to him in his affidavits. Consequently, the issue of adequacy of damages in his case cannot be assessed in his favour.

5. The applicant averred that the BLUP of the respondent was granted on 16th May 2016 and that the construction works started since 18th October 2016 but the record shows that the application for the injunction was only lodged some two months later, on the 27th of December 2016. The delay in entering the present application does not help the case of the applicant in anyway. Under **section 4 (2) of the Environment and Land Use Tribunal Act 2012**, the present jurisdiction of the Tribunal may be seized where it is a matter of *urgency* and there is a likelihood of prejudice. The applicant attempted to explain that he tried to contact the authorities when the building works started but this does not justify the delay in entering the present application and consequently I have not been satisfied of the urgency of the matter. Since a BLUP was granted to the respondent, the applicant could have expected that the construction works would be forthcoming. In fact it was only 5 months later that the respondent started the works and the applicant had ample time to submit his application for injunction before any modification to the land on the site had even taken place due to the construction work having commenced and yet he chose not to.

6. At the time that the application for injunction was made, the construction had already started. As at 25th January 2017, the building was fully in place. This is evidenced by the photos produced as annexes D1 and D2 of the applicant's affidavit dated 25th January 2017. The respondent avers as at 15th February 2017, date of its affidavit that the building is around 70% complete. I believe that the present application has lost in *raison d'etre*. True it is that the interim order for injunction prayed for was rejected but I was

fully entitled to do so, on the basis of the affidavit put in by applicant for the reasons mentioned above.

7. I accordingly decline the order prayed for. No order as to costs.

I certify as to counsel.

Jayshree RAMFUL-JHOWRY

Vice Chairperson

31 May 2017

For Applicant: Mrs I. Padya, Attorney

For Respondent: Mr.G. Bhanji Soni, of Counsel

For Co-Respondent : Mr.N. Hussenee , of Counsel