MRU 2025 AND ORS v. THE DISTRICT COUNCIL OF SAVANNE

2024 SCJ 218

Record No. 122251 (5A/232/21)

THE SUPREME COURT OF MAURITIUS

In the matter of:-

1. **Mru2025**
2. **Yan Hookoomsing**
3. **Carina Govinda Gounden**
4. **Moonsamy Gounden**

Applicants

v

The District Council of Savanne

Respondent

In the presence of

West Coast Leisure Ltd

Third Party

JUDGMENT

This is an application for leave to apply for a judicial review of the respondent's decision to grant to the Third Party a Building and Land Use Permit (BLUP) for the setting up of a *"hotel development at ground floor only, comprising of a reception and administration block, a restaurant, 33 suite rooms, a spa facility, parking and technical amenities"* at Black River, Savanne, Coastal Road, B9, along Beau Champ Beach at Bel Ombre on "*Pas Geometriques*" coastal State Land.

The applicants are also praying for a stay of the execution of the authorisation given by the respondent under the BLUP.

The grounds for the review are that the respondent's decision is ultra vires and tainted with illegality, irrational and Wednesbury unreasonable, the decision was

taken on the basis of a wrong use of discretion and is bias and/or is in breach of the rules of natural justice.

Both the respondent and the Third Party have taken preliminary objection to the effect that this application for leave was not made promptly. In addition, the respondent has taken objection that the applicants' founding affidavit is not in compliance with sections 190, 191, 192 and 194 of the Courts Act. The Third Party is also resisting the present application for leave on the grounds that the applicants do not have the locus standi and the application does not disclose an arguable case.

The applicant No. 1 is a registered non-governmental organisation with one of its main objects being the promotion of actions in favour of environment protection and sustainable development. It defends the coastal natural heritage of Mauritius and promotes its sustainable development for the benefit of the citizens of Mauritius. It started its activities in 2008 with the dissemination of user-friendly multimedia content on key sustainable development issues and initiatives.

The work of the applicant No. 1 has received recognition and it has since 2019 actively participating in key public policy consultations to advocate for the sustainable development of the coastal zone. The services of the applicant No. 1 were enlisted in 2011 with the "Maurice, Ile Durable" (MID) Commission to cover the national consultative workshops for the official formulation of a national MID policy, strategy and action plan.

It also sensitises local policymakers and relevant stakeholders on sound environmental principles and considerations by raising awareness through science and international best practices. It does so by actively engaging in policy advocacy work to advance sustainable development norms and best practices for the coastal zones in Mauritius and by running field, media and social media advocacy campaigns on the subject.

The applicant No. 1 and its members have since 2014 been actively engaged in running a campaign together with other organisations for the sustainable and inclusive development of the Mauritian coastal zone and the designation of "*Aret Kokin Nu Laplaz (AKNL)".*

The applicant No. 2 is one of the founder members of applicant No.1. He reckons a long track record of direct involvement regarding environmental concerns posed by projects in Mauritius. He was actively and successfully involved in obtaining

the protection of Ferney Valley from the deployment thereat of a highway project in 2004 – 2005. He was nominated in 2013 on the National Energy Commission and in 2016 by the Ministry of Energy and Public Utilities to sit on the first Board of the then Mauritius Renewable Energy Agency (MARENA) as one of the two civil society representatives on the Board.

The applicant No.3 was born and brought up in Souillac where her parents still reside and where she still lives occasionally with them. She reckons active involvement in activities relating to environmental concerns posed by projects in Mauritius. She is an active participant in the various campaigns carried out under the AKNL umbrella of the applicant No. 1 and she is also a member of the "*Plateforme Sov Nu Falaise Gris Gris"* which in 2012 successfully militated to secure a direct public access on the cliffs to "*La Roche Qui Pleure"* from the "*Gris Gris"* public beach.

The applicant No. 4 is the father of applicant No. 3. He resides in Souillac where he was born and brought up. He is also a staunch advocate of the protection of the environment. He is a member of the applicant No. 1 and also a member of the "*Plateforme Sov Nu Falaise Gris Gris".* He is a well-known public figure in Souillac and in the district of Savanne. He was the chairman of the Village Council of Souillac between 2017 and 2019, an elected village councillor for the Village Council of Souillac from 1992 to 2002 and from 2012 to 2019, an elected district councillor for the District Council of Savanne between 2012 and 2015 and an elected district councillor for the District Council of Grand Port/Savanne between 1992 and 2000.

The Beau Champ beach is a place of choice which the applicants Nos. 2 to No. 4 have been, and still are using for entertainment, leisure and educational actions and activities.

The above facts are not disputed by the respondent and the Third party.

On 17th November 2020, a notice was published in the newspapers of an application made by the Third Party for a BLUP for the setting up of a hotel development of 33 Villas suites and ancillary facilities at Bel Ombre.

By way of letter dated 18 November 2020, the applicants Nos. 2 and 3 made a complaint to the Minister in charge of Environment and Climate Change in respect of the said hotel development project.

In or about November 2020, the applicants lodged with the respondent formal objections to the aforesaid application made by the Third Party for the BLUP. At the

hearing of the Permits and Business Monitoring Committee of the respondent, the applicants were given an opportunity to make representations following their objections.

The objections raised by the applicants revolved around the following: -

(a) the impairment of an Environmentally Sensitive Area comprised of wetlands and sand dunes at the site and the destruction of rare coastal ecosystems vital for limiting coastal erosion which would result from the deployment of the hotel development in question;

(b) granting the BLUP would contradict and/or violate various legal provisions and planning instruments;

(c) the lack of economic rationale for approving the deployment of the proposed hotel development; and

(d) the fact that the main tourism markets for Mauritius are European countries, that the G7 group of advanced economies which is comprised of the main European countries have recently pledged historic commitments to put climate, biodiversity and the environment at the heart of worldwide COVID-19 recovery and that the proposed development was repugnant to the said commitments.

The applicants pointed out that having regard to the changes brought about by the Climate Change Act and their particular relevance to the issues posed by the hotel development, the respondent ought to seek and obtain the stand of the Ministries concerned for the purpose of and before taking its decision on the application made by the Third Party in view of the technicalities involved and all the moreso as the Environment Impact Assessment report which had been submitted by the Third Party for the purpose of obtaining an EIA licence in relation to the said development did not address at all climate change considerations and did not disclose that the development in question would be carried out on an Environmentally Sensitive Area comprising of wetlands and sand dunes.

By letter dated 01 July 2021, the respondent informed the applicants that the Permits and Business Monitoring Committee at its sitting of 28 May 2021 has approved the grant of BLUP to the Third Party for “the s*etting up of a hotel development at ground floor only, comprising of a reception and administration block,*

a restaurant, 33 suites rooms, a spa facility, parking and technical amenities" at Black River Savanne Coastal Road B9, Bel Ombre.

The site of the hotel development is located in an Environmentally Sensitive Area (ESA), namely Sand Beach & Dune SB 63 as officially recorded in the ESA Classification Report of Mauritius (June 2009) commissioned by the Ministry of Environment and National Development Unit. Also, there exist Sand Dunes in the near pristine state with strong native vegetative cover and the presence of marshy lands and coral communities.

The applicants state that in view of the above features of the site of the said hotel development and their importance for the region, the respondent's decision to grant the BLUP is wrong and perverse. It is in contradiction with and in violation of the 2003 National Development Strategy as the hotel development in question which is located in the South Coast Heritage Zone as defined in the said 2003 National Development Strategy is a tourism development which is not a recommended development under the said National Development Strategy for the South Coast Heritage Zone.

Moreover, respondent's decision is in contradiction with and in violation of the Tourism Plan 2002 inasmuch as the Tourism Development Plan recommended inter alia that portion of coastal zone in Mauritius must be protected. The focus is to protect the coastline from development and opportunities exist to develop a different product from the beach hotels by promoting small scale, high quality countryside resort in a parkland setting.

Also, the respondent's decision is in violation of the Outline Planning Scheme for the Black River District Area as the said project does not satisfy the criteria as laid down in the Outline Planning Scheme for tourism development.

Further, it is not apparent from the respondent's decision making process and/or from its impugned decision what are the considerations and justifications which the respondent has taken into account and assessed in order to grant the BLUP. The respondent's decision inter alia failed to comply with the Climate Change Act, the State Land Act and the Pas Geometriques Act.

Validity of the founding affidavit

We have considered the applicants' founding affidavit. We note that the applicants have not made any declaration in their affidavit. However we note that the founding affidavit was affirmed before the Chief Court Officer.

Now section 193 of the Courts Act provides that an error as to the form of the oath, solemn affirmation or declaration, as the case may be, shall not affect the validity of the oath, solemn affirmation or declaration respectively, if no protest is made by the person sworn, solemnly affirmed or made the declaration, at the time such oath, solemn affirmation or declaration is made or taken.

The applicants have not objected to the form in lieu of jurat and consequently the affidavit is to all intent and purposes a valid affidavit in support of the present application. We may add that following the objection raised by the respondent in its affidavit dated 11 February 2022, the applicants had filed another affidavit dated 14 March 2022 which is in compliance with section 194 of the Courts Act.

Consequently, we hold that the founding affidavit in support of this application is a valid one.

Promptness

Order 53 rule 4(1) of the English Rules of the Supreme Court (RSC) provides that an application for leave to apply for judicial review shall be made promptly and in any event within three months from the date when the grounds for the application first arose unless the Court considers that there is good reason for extending the period within which the application shall be made.

There is no fixed time limit of 3 months for bringing a judicial review application but what is required is that an application for judicial review must be made promptly. It is incumbent upon an applicant to establish that the claim has been brought promptly and that he has so acted in the particular context, the specific facts and circumstances of the case. It requires an evaluative judgment by the court hearing the application. The requirement of promptness applies in all cases and it cannot be reduced to a question of whether there has been prejudice or detriment to another person (see **DPP v Commission on the Prerogative of Mercy [2024 SCJ 89]**).

Thus, the burden to show that a claim has been brought promptly rests on the claimant, since it is the claimant who asserts that it should have leave to bring its claim and the relevant information pertaining to the question whether it has acted promptly will be in its knowledge (see paragraph 14 of **C-Care (Mauritius) Ltd v Employment Relations Tribunal & Ors [2022] UKPC 58**).

We have given due consideration to the particular context and the specific facts of the case. We note that the applicants have lodged the present application within the 3 months period. However, the applicants have failed to put forward any reason to justify the inordinate delay in lodging the present application which was made on the eve of the delay of three months from the date of the impugned decision. Having regard to the particular context and the specific facts of the case, we hold that the application has not been lodged promptly and there is in all the circumstances no justifiable or excusable explanation to justify the inordinate delay in lodging such an application.

In view of our conclusion above, we could have disposed of this application. We have nonetheless considered the other grounds of objection namely, whether the applicants have sufficient interest in the matter to which this application relates and whether the application discloses an arguable case.

Locus Standi

Order 53 rule 3(7) RSC stipulates the standing test of sufficient interest in the matter to which the application for judicial review relates. This test has received a more expansive and liberal interpretation to allow access to judicial review not only to a particular applicant for himself but also to three other types of applicants claiming surrogate, associated or citizen (acting on behalf of the public or a sector of the public) standing for the realisation that the possibility of instituting such application challenging the illegalities of the executive or the misuse of power by the executive or public authorities will induce the authority concerned to act with greater responsibility which will have the effect of maintaining the rule of law and furthering the cause of justice (see **Sauvage D & Ors v The Minister of Environment, Solid Waste Management and Climate Change & Ors [2024 SCJ 6]**).

In **AXA General Insurance Ltd and others v HM Advocate and others [2011] UKSC 46** referred to in **Walton v The Scottish Ministers [2012] UKSC 44**, the UK Supreme Court clarified the approach which should be adopted to the question of standing to bring an application to the supervisory jurisdiction. In doing so, it

intended to put an end to an unduly restrictive approach which had too often obstructed the proper administration of justice: an approach which presupposed that the only function of the court's supervisory jurisdiction was to redress individual grievances, and ignored its constitutional function of maintaining the rule of law.

Lord Hope said the following at paragraph 63 of the judgment of **Axa** (supra):

> *"I would not like to risk a definition of what constitutes standing in the public law context. But I would hold that the words "directly affected" which appear in rule 58.8(2) capture the essence of what is to be looked for. One must, of course, distinguish between the mere busybody, to whom Lord Fraser of Tullybelton referred in R v Inland Revenue Commissioners, Ex p National Federation of Self-Employed and Small Businesses Ltd [1982] AC 617, 646, and the interest of the person affected by or having a reasonable concern in the matter to which the application related. The inclusion of the word "directly" provides the necessary qualification to the word "affected" to enable the court to draw that distinction. A personal interest need not be shown if the individual is acting in the public interest and can genuinely say that the issue directly affects the section of the public that he seeks to represent."*

It is clear from that passage, a distinction must be drawn between a mere busybody and a person affected by or has a sufficient interest in the matter to which the application for judicial review relates.

Also, in **J Mussington & Anor v Development Control Authority & Ors [2024] UKPC 3,** the Privy Council noted at paragraph 45 that **AXA** and **Walton** have been taken as authoritative as to standing in judicial review in England and Wales. We may add that the provisions of section 31(3) of the Senior Courts Act 1981 in England which stipulates that the court shall not grant leave for judicial review unless it considers that the applicant has a sufficient interest in the matter to which the application relates is similar to those specified under Order 53 rule 3(7).

Further, we bear in mind the observation made by the Privy Council that "*where an application for judicial review involves issues of environmental concern it is not necessary that the applicant demonstrates an expertise in the subject matter. All that is required is that they demonstrate some knowledge or concern for the subject."* (see para. 57 **J Mussington** (supra)).

Applying the legal principle as set out above, and taking a liberal approach in respect of an applicant standing in judicial review proceedings, we are of the considered view that the applicants are undoubtedly not busybodies and they have

demonstrated in their affidavit, the material part of which is reproduced above, sufficient interest in the matter to which the present application for judicial review relates. The main object of Applicant No. 1 is the promotion of actions in favour of environment protection and sustainable development. Its work had received recognition at national level. Applicants Nos. 2, 3 and 4 advocate for the protection of the environment and sustainable development. The applicants had lodged formal objection with the respondent in respect of the application made by the Third Party for the grant of the BLUP.

Arguability

The applicants seek leave for judicial review on the basis that the respondent's decision is inter alia ultra vires and Wednesbury unreasonable. At leave stage, the applicants are only required to establish that there is an arguable ground for judicial review with a realistic prospect of success. The court would not embark into any in depth examination as the threshold which the applicants must cross at this stage is a low one.

We have set out above in detail the salient parts in the applicants' affidavit in which they have substantiated the grounds for judicial review of the respondent's decision.

After having heard the parties and upon considering the documents on record, we consider that the applicants have met this low threshold and the application discloses at this juncture an arguable case.

For the reasons above, we hold that the application has not been lodged promptly and leave is accordingly refused.

We make no order as to costs.

M. I. Maghooa
Judge

G. Jugessur-Manna
Judge

17 May 2024

Judgment delivered by Hon M. I. Maghooa, Judge

For Applicants	**:**	**Mr P D Lallah, Attorney at Law** **Mr L E Ribot, of Counsel**
For Respondent	**:**	**Mr R K Ramdewar, Attorney at Law** **Mr A R Dayal, of Counsel**
For Third Party	**:**	**Mr F Hajee Abdoolah, Attorney at Law** **Mr N Ramburn, SC together with** **Ms S Carrim, of Counsel**