# IN THE SUPREME COURT OF SEYCHELLES

## Civil Side: CS 140/2012

**[2014] SCSC 117**

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**MICHEL BRICE**

Plaintiff

versus

**THE PLANNING AUTHORITY**

Defendant

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Counsel: Mr. W. Lucas for petitioner

Mr. Georges for respondent

Delivered: 14 February 2014

JUDGMENT

Karunakaran J

The petitioners in this matter seek the Court for a writ of *certiorari to* quash the decision of the Respondent - the Planning Authority - dated 31st May2012 and issue a writ of mandamus directing the Respondent to reconsider the application of the petitioners favorably. The petitioners seek those remedies invoking the supervisory jurisdiction of this Court over subordinate courts, tribunals, and adjudicating authority conferred by article 125(1) (c) of the Constitution.

At all material times, the Petitioners were and are co-owners of an immovable property, a piece of land- Title C114 with an area of 1056 Square Meters, situated at Anse La Mouche, Mahé. In the year 2012, they applied to the Respondent seeking approval for the sub-division of the land into two plots. Their intention behind the proposed subdivision was to give one of the sub-divided plots to their son so that he could build his own house to live close to the parents. The respondent declined to grant approval for the subdivision stating the reason in its letter dated 31st May 2012 thus:

> *"The proposed sub-division will adversely affect the density of this area"*

The petitioners being aggrieved by the said determination of the respondent appealed against it to the Minister for Land Use and Housing, under the provisions of the Town and Country Planning Act. The Minister in his decision dated 26th July 2012, dismissed the said appeal, confirmed the determination of the Respondent.

The petitioner, being dissatisfied presumably with the said decision of the Minister - hereinafter called the *"impugned decision"*, has now come before this Court for a *"Judicial Review"* of it, alleging that the said "decision" including that of the respondent is unfair, unjust and unreasonable.

In essence, it is the contention of the petitioner that the decision of the respondent and that of the Minister is irrational and unreasonable since they have failed to give due consideration to the entire circumstances surrounding the application for sub-division. They have applied a double standard since they have given such approval for sub-divisions to other land-owners in the same locality.

In the circumstances, according to the petitioners, the decision of the respondent and that of the Minister is unfair and unreasonable. Therefore, the petitioners seek the Court for a writ of *certiorari* to quash the said decision and issue a writ of mandamus directing the respondent to reconsider the application of the petitioners for a sub-division and render justice.

After meticulously perusing the records of the proceedings before the Ministry of Land Use and Housing, I analysed the arguments advanced by both counsel touching on points of law as well as facts.

I will now move on to examine the merits of the case in the light of the record of the proceedings held before the ministerial authorities and the submission made by counsel on both sides. To my mind, two fundamental questions arise for determination in this case. They are:

1. *Is the decision of the Respondent irrational and unreasonable, when it found that the proposed sub-division will adversely affect the density of this area?*
2. *Is the decision of the Minister upholding the determination of the respondent in this matter, unreasonable having regard to all the circumstances of the case?*

Firstly, though it appears to be monotonous, I would like to restate herein what I have stated before in ***Cousine Island Company Ltd Vs Mr. William Herminie, Minister for Employment and Social Affairs and Others - Civil Side No. 248 of 2000.*** Whatever is the nature of issue factual or legal that may arise for determination following the arguments advanced by counsel, the fact remains that this Court is not sitting on appeal to examine the facts and merits of the case heard by the respondent or by the Minister on appeal. Indeed, the ***system of judicial review*** is radically different from the ***system of appeals***. When hearing an appeal the Court is concerned with the merits of the case under appeal. However, when subjecting some administrative decision or act or order to judicial review, the Court is concerned only with the ***"legality", "rationality" (reasonableness)*** and ***"propriety"*** of the decision in question ***vide the***

***landmark dictum of Lord Diplock in Council of Civil Service Union vide supra..*** On an appeal the question is “right or wrong”? - Whereas on a judicial review the question is “lawful or unlawful?” or “reasonable” or “unreasonable”? - Or rational or irrational? - Or procedurally proper or improper?

On the issue of legality, I note, the entity of law is always defined, certain, identifiable and directly applicable to the facts of the case under adjudication. Therefore, the court may without much ado determine the issue of “legality” of any administrative decision, which indeed, includes the issue whether the decision-maker had acted in accordance with law, by applying the *litmus test,* based on *an objective assessment* of the facts involved in the case. On the contrary, the entity of “fairness” or “reasonableness” cannot be defined, ascertained and brought within the parameters of law; there is no *litmus test* to apply, for it requires *a subjective assessment* of the entire facts and circumstances of the case under consideration and such assessment ought to be made applying the yardstick of human reasoning and rationale.

I will now, turn to the crux of the whole issue as to ***“reasonableness”*** of the decision in question. What is the test the Court should apply in determining the reasonableness of the impugned decision in matters of judicial review?

In order to determine the issue as to *reasonableness of a decision* one has to invariably go into its merits, as formulated in ***Associated Provincial Picture Houses V Wednessbury Corporation*** ***[1948] 1 KB 223.*** Where judicial review is sought on the ground of ***unreasonableness***, the Court is required to make value judgments about the quality of the decision under review. The merits and legality of the decision in such cases are intertwined. Unreasonableness is a stringent test, which leaves the ultimate discretion with the judge hearing the review application. To be unreasonable, an act must be of such a nature that no reasonable person would entertain such a thing; it is one outside the limit of reason (Michael Molan, Administrative Law, 3 Edition, 2001). Applying this test, as I see it, the court has to examine whether the decision in question is unreasonable or not.

At the same time, here one should be cautious in that, the "Judicial review is concerned not with the merits of a decision but with the manner in which the decision was made. Thus, the judicial review is made effective by the court quashing an administrative decision without substituting its own decision and is to be contrasted with an appeal where the appellate tribunal substitutes its own decision on the merits for that of the administrative officer." ***Per Lord Fraser Re Amin [1983] 2 All E R 864 at 868.***

In determining the issue of reasonableness of the decision in the present case, the court has to make *a subjective assessment* of the entire facts and circumstances of the case and consider whether the decision of the respondent and the Minister is reasonable or not. In considering reasonableness, the duty of the decision-maker is to take into account all relevant circumstances as they exist at the date of the hearing that he must do in what I venture to call a broad commonsense way as a man of the world, and come to his conclusion giving such weight, as he thinks right to the various factors in the situation. Some factors may have little or no weight; others may be decisive but it is quite wrong for him to exclude from his consideration matters, which he ought to take into account ***per Lord Green in Cumming Vs. Jansen (1942) 2 All ELR at p656.***

In my considered view, respondent and the Minister in their decision have rightly considered the expert opinion evidence on record and the relevant facts and circumstances of the case in arriving at their decisions. Obviously, the petitioner's contention to the contrary, stating that they have acted unreasonably and without proper consideration of facts is highly farfetched. Hence, the submission of the petitioners' counsel that they acted arbitrarily applying double standard did not appeal to me in the least. Obviously, it is the duty of the decision-maker to consider each case on its own facts and merits and arrive at the conclusion. In my judgment, I find that the respondent and the Minister have accordingly, done so in this matter.

In the absence of any evidence to substantiate the alleged ***double standard*** by any official involved in the decision-making-process, it is indeed, reasonable for any adjudicating authority to arrive at the conclusion, which the respondent and subsequently the ***Minister*** arrived at, in their respective consideration and determination of the case.

For these reasons, I hold that that the decision of respondent and that of the Minister in this matter is neither *irrational* nor *unreasonable.* Therefore, I decline to grant the *writ of either certiorari or mandamus* and dismiss the petition accordingly. I make no orders as to costs.

Signed, dated and delivered at Ile du Port on 14th February 2014.

D Karunakaran
Judge of the Supreme Court