

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: MC 35/2017**

**[2018] SCSC 32**

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**THE ISLAMIC FOUNDATION OF SEYCHELLES  
REP BY ITS CHAIRPERSON HUBERT SERVINA**

Petitioner

versus

**THE MINISTRY OF HABITAT  
INFRASTRUCTURE AND LAND TRANSPORT**

Respondent

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Heard: 17 January 2018  
Counsel: Mrs. Samantha Aglae for petitioner  
Mr. Joji John for the Respondent

Delivered: 17 January 2018

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**JUDGMENT**

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L. Pillay, J

**[1]** This is an application for judicial review filed by the Petitioner, dated 29<sup>th</sup> May 2017 against a decision of the Minister dated 8<sup>th</sup> March 2017.

[2] The Petitioner avers that the decision of the Minister to uphold the refusal without stating any reason and without granting the Petitioner an opportunity to be heard in the appeal process was unreasonable, irrational and unfair without any merits or legality.

[3] The Petitioner prays the Court as follows:

- a) issue a writ of certiorari quashing the decision of the Respondent;
- b) issue a writ of mandamus for the Respondent to properly fulfil its duty and relook at the application.
- c) an order of costs incurred by the Petitioner in the application and during the appeal processes.
- d) an order for costs.

[4] The Respondent objected to the application and averred that the Respondent was unable to grant the application of the Petitioner since the development is located in a dense residential area and the development would constitute an over development of the plot.

[5] In matters that come before the Court by way of Judicial Review the Court is not concerned with the decision that was taken by the adjudicating body but with the manner that the decision was reached. It is the process of the decision making that is reviewed by Court.

[6] In the **Council of Civil Service Unions v Minister for the Civil Service [1985] AC 374**, Lord Diplock defined irrationality as:

*...what can now be succinctly referred to as Wednesbury's unreasonableness'. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who has applied his mind to the question to be decided could have arrived at it.*

[7] It is clear from the above that ‘unreasonableness’ and ‘irrationality’ are not independent principles but have overlapped and merged as stated by Twomey CJ in the case of **Rangasamy v Chief Executive Officer of Planning Authority [2016] SCSC 865**. Twomey CJ went on to add that:

*The umbrella principle of unreasonableness includes decision-making process that may have been illegal, unreasonable, unfair or, ultra vires and alone or together articulate the unease with which a reasonable person might view a decision taken. Sometimes, the disquiet brought about by a decision may not fit into any of the above labels but nevertheless amount to a defect which fails the scrutiny of any reasonable person when reviewing the decision.*

[8] The Seychelles Court of Appeal in the case of **Doris Raihl v Ministry of National Development 6 of 2009** relying on the cases of **Ridge v Baldwin [1964] AC 40; Dimes v Grand Junction Canal Proprietors; Perrine v Port Authority and other Workers Union [1971] MR 168** explains very clearly that:

*The golden rule jealously guarded in administrative law by the Courts is that no executive decision adversely affecting the rights of the citizen, more particularly his property rights, may be taken behind his or her back, without affording him or her an opportunity to be heard.*

[9] From Mrs. Aglaes’s submission what I can make out is that it was unreasonable for the Respondent to take into account a letter from the Bishop Wong referring to an encroachment onto the Church’s property by the neighbouring property in question. Counsel argued that the Respondent took into consideration irrelevant factors being the letter from the Venerable Danny Elizabeth in which he claims that there is concern that the project is part of a greater plan to Islamise the Seychelles.

[10] Counsel for the Petitioner argued that a door to door consultation was conducted to which her client was not invited. It was her submission that in any event the main concern raised was one of noise.

- [11] Counsel further submitted that all relevant agencies had no issues. Health had no issue, PUC had no issue, Environment had no issue other than to request that the soak away be relooked at, Land Transport said they required 6 more parking bays but in spite of those the Respondent instead of coming back to the Petitioner with those queries and ask them to address the concerns the Respondent decided that there was going to be a noise problem and could not have the development.
- [12] Counsel submitted that when filing the appeal the Petitioner asked the Respondent for guidance on how to meet the requirements for planning approval and even confirmed that loudspeakers would not be used.
- [13] Mrs. Aglae’s argument is that the Petitioner was not given the opportunity to be heard on appeal. The AAC decided that the downsizing would be so substantial that the change to the proposal would be so significant that they recommended that the refusal be maintained.
- [14] The questions for the Court are as follows:
- a) did the Respondent act reasonably in taking into account the views of the Anglican Church?
  - b) was the Respondent’s decision irrational in that:
    - (i) did the Respondent act reasonably in reaching the decision?
    - (ii) did the Respondent act within the bounds of his discretion?
- [15] Counsel for the Petitioner made note of the fact that Folio 25 made no mention of any representatives of the Anglican Church at the consultative meeting but rather mention is made of their presence in the Memorandum termed confidential. I note that the document at Folio 25 makes note of 36 participants presents. It accounts for 16 and makes no mention of the remaining 20. However at page 3 of the document it goes on to note that “Despite the majority of Anglicans present, especially Mr. Danny Elizabeth (Anglican Priest) there is also a great fear of indirect call for conversion of Christians to Muslims.” That in itself clears up the issue of presence of the Anglican representatives.

- [16]** In any event, in my view, as regards the presence of the representatives of the Anglican Church who went to Praslin from Mahe I would find nothing irregular with that seeing that the Anglican Church is the immediate neighbour of the Petitioner and is in my view just as entitled to be a part of the meeting as the other residents within the 200 metre buffer zone. As such the Respondent was not acting unreasonably in taking into account the views of the Anglican Church as it did those of the other residents.
- [17]** I note that at 8.0 in their findings and observations the AAC noted that there were 10 residents within the 200 metre buffer zone and their concerns raised were as follows;
- a)** Noise disturbances from existing Islamic services and potential noise impact in the future after development. It will add to existing noise contributed by the existing churches in the vicinity and night entertainments by Breeze Garden.
  - b)** The mosque should not be in a residential area.
- [18]** In effect the noise concern were not raised as part of an anti-Islamist conspiracy but by residents concerned by already raised levels of noise in their community from the Church and the entertainments from Breeze garden.
- [19]** According to the records the Petitioner was already using the existing house on the property as a prayer hall and residents were already complaining that the early morning call to prayer was a problem. In my view it is irrelevant for the purposes of this case whether or not the Petitioner was using one of the buildings currently on the property illegally as a prayer hall. What is relevant to my mind is the fact that residents made known that the noise from the calls to prayer during the day was already causing concerns.
- [20]** The AAC in its findings considered the impact of the call to prayer on residents as well as the issue of the size of the proposed building at 9 metres high and lack of parking. The committee noted that the size of the building would impact on the amenities of the area and change the landscape.

- [21] I find the AAC's advisory to the Minister to be comprehensive. Their conclusion was that indeed the project consisted an overdevelopment of the parcel, my understanding of which is that the proposed new building along with the existing building which is to be retained would cover 55% of the plot whereas the allowable coverage for the area is 45% (see folio 16/1), and that the level of scaling down would need to be so substantial that the change to the proposal would be so significant that it merited refusal.
- [22] If at all the letter from the Venerable Elizabeth as well as his views were taken into consideration I do not find that it was the sole consideration and nor was it unreasonable consideration. Some of the concerns that were raised in the letter were in fact concerns raised by residents, with regards to noise, and some of the agencies consulted in particular Land Transport, with regards to the issue of parking and vehicular and pedestrian traffic congestion.
- [23] I note the letter dated Monday 22<sup>nd</sup> August 2016 addressed to Mr. Hoareau of the Planning Authority from the Petitioner wherein the Petitioner expressed its intent to appeal the refusal of permission and put forward its arguments against the reasons given by the Planning Authority for refusal of the application.
- [24] From the records it is clear that the above letter was considered.
- [25] As stated in the case of **Joanneau**, all communications from the applicant prior to a decision being taken has to be considered as an opportunity to be heard. To that extent then it cannot be said that the Petitioner did not have an opportunity to be heard.
- [26] The Petitioner was part of the public consultation meeting of 25<sup>th</sup> April 2016 and Mr. Elisabeth met with the advisory committee on 20<sup>th</sup> January 2017 after the appeal was filed to the Minister.
- [27] In as much as there is strong opposition from the Anglican Church for the project, from a perusal of the record I find that there was no procedural irregularity or unreasonableness in the refusal of the appeal.

**[28]** It is clear that though the concerns of the community and that of Land Transport, which were valid and relevant concerns, could be addressed it would require the project to be substantially scaled down to more than half of what is proposed in order to address such concerns and on that basis the refusal was upheld.

**[29]** In my view it cannot be said that the decision was unreasonable nor irrational, as defined above, and so I find. I further find that the Respondent acted within the bounds of his discretion in reviewing the appeal.

**[30]** I accordingly dismiss the application.

**[31]** Each party shall bear its own cost.

Signed, dated and delivered at Ile du Port on 17<sup>th</sup> January 2018

L. Pillay  
Judge of the Supreme Court