Mauritius

Environment and Land Use Appeal Tribunal Act

Act 5 of 2012

Legislation as at 30 June 2017

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Environment and Land Use Appeal Tribunal Act
Contents

1. Short title 1
2. Interpretation 1
3. Establishment of Tribunal 1
4. Jurisdiction of Tribunal 3
5. Proceedings of Tribunal 3
6. Appeal to Supreme Court 5
7. Rules 5
8. *** 5
9. *** 5
10. *** 5
Schedule (Section 5(4)(a)) 5

Mauritius

Environment and Land Use Appeal Tribunal Act

Act 5 of 2012

Commenced on 1 October 2012

[This is the version of this document at 30 June 2017.]

1. Short title

This Act may be cited as the Environment and Land Use Appeal Tribunal Act.

2. Interpretation

In this Act—

"**Chairperson**" means the person appointed as such under section 3 (1) (a);

"**division**" means a division of the Tribunal set up in accordance with section 3 (5) (b);

"**member**"—

(a) means a person appointed as such under section 3 (3) (a); and

(b) includes an expert appointed under section 3 (4);

"**party**", in any proceedings before the Tribunal, includes the State;

"**relevant Act**" means—

(a) the Building Act;

(b) the Environment Protection Act;

(c) the Local Government Act;

(d) the Morcellement Act;

(e) the Town and Country Planning Act; or

(f) such other Act as may be prescribed;

"**Secretary**" means the Secretary to the Tribunal referred to in section 3 (6);

"**Tribunal**" means the Environment and Land Use Appeal Tribunal established under section 3 (1);

"**Vice-chairperson**" means a person appointed as such under section 3 (1) (b).

3. Establishment of Tribunal

(1) There is established, for the purposes of this Act and the relevant Acts, a Tribunal to be known as the Environment and Land Use Appeal Tribunal which shall consist of—

(a) a Chairperson, who shall be a barrister of not less than 10 years' standing, appointed by the Public Service Commission;

(b) one or more Vice-chairpersons, who shall be a barrister or barristers of not less than 5 years' standing, appointed by the Public Service Commission;

(c) such other members as may be necessary to enable the Tribunal to discharge its functions under this Act and the relevant Acts, who are not—

(i) public officers of the Ministry responsible for the subject of environment, housing, land use or local government;

(ii) members, chief executives or officers of a local authority; or

(iii) members of, or candidates for election to, the Assembly, the Rodrigues Regional Assembly or a local authority, or persons otherwise actively engaged in politics.

(2) The Chairperson and a Vice-chairperson may be called upon by the Public Service Commission to act as Chairperson or Vice-chairperson of any tribunal established under any other enactment.

(3) The members referred to in subsection (1) (c) shall—

(a) be appointed by the Attorney-General, after consultation with the Ministers to whom responsibility for the subjects of environment, housing, local government and civil service are assigned, on an *ad hoc* basis and for such period as he considers necessary;

(b) be paid an all-inclusive allowance, subject to the approval of the Minister to whom responsibility for the subject of finance is assigned; and

(c) be under the administrative control of the Chairperson.

(4) Where the subject matter of an appeal relates to a technical field, the Attorney-General may, on the recommendation of the Chairperson, enlist the services of a suitable expert in the field, to act as member of the Tribunal on an *ad hoc* basis for such period as he considers necessary.

(5) (a) The Tribunal shall sit in one or more divisions.

(b) A division shall consist of the Chairperson, or a Vice-chairperson, and 2 other members selected by the Chairperson.

(c) A division may be set up on a temporary basis for a period not exceeding one year where there is a backlog of cases before the Tribunal and such division shall be chaired by a Senior District Magistrate, who shall be designated by the Chief Justice, to act as Vice-Chairperson of the Tribunal during that period.

(d) Any decision of a division of the Tribunal shall be considered to be the decision of the Tribunal.

(6) (a) There shall be a Secretary to the Tribunal who shall be appointed by the Public Service Commission and who shall be responsible for—

(i) keeping a record of the proceedings of the Tribunal;

(ii) keeping in safe custody the papers and documents of the Tribunal;

(iii) issuing summonses and recording statements of witnesses called before the Tribunal; and

(iv) performing such other duties as the Tribunal may require.

(b) The Secretary to Cabinet and Head of the Civil Service may, at the request of the Chairperson, designate such public officers as may be necessary to enable the Tribunal to discharge its functions under this Act.

(c) The Secretary and public officers referred to in this subsection shall be under the administrative control of the Chairperson.

(7) For the proper discharge of the functions of the Tribunal, the Master and Registrar shall designate such number of ushers as, in the opinion of the Chairperson, are required for that purpose.

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4. Jurisdiction of Tribunal

(1) The Tribunal shall—

(a) hear and determine appeals—

(i) under section 54 of the Environment Protection Act;

(ii) from a decision of a Municipal City Council, Municipal Town Council or District Council under section 117(14) of the Local Government Act;

(iii) under section 7B of the Morcellement Act; and

(iv) under sections 7 and 25 of the Town and Country Planning Act; and

(b) exercise such other jurisdiction as may be prescribed in any relevant Act.

(2) The Chairperson or, in his absence, the Vice-chairperson, may, in respect of any matter which is due to be heard by the Tribunal, on application made to him by a party, sit alone for the purpose of making such orders, including an order in the nature of an injunction, as he thinks fit, where he is of opinion that, for reasons of urgency and the likelihood of undue prejudice, it is necessary to do so pending the hearing of the matter.

5. Proceedings of Tribunal

(1) (a) Subject to this section, the Tribunal shall regulate the manner in which proceedings shall take place before it.

(b) Where an appeal is lodged under section 4 (1), the Chairperson shall refer the matter to a division for hearing and a determination.

(c) A determination of the Tribunal shall, unless all the persons constituting a division are agreed, be that of the majority.

(2) (a) The Tribunal shall sit at such time and place as the Chairperson may determine.

(b) Where the Tribunal adjourns any proceedings, it shall resume them at such place and time as the Chairperson may determine.

(3) Any proceedings of the Tribunal shall—

(a) be held in public;

(b) be conducted with as little formality and technicality as possible; and

(c) not preclude an endeavour by the Tribunal to effect an amicable settlement between the parties.

(4) (a) Every appeal under section 4 (1) shall, subject to paragraph (b), be brought before the Tribunal by depositing, with the Secretary, a notice of appeal in the form set out in the Schedule, setting out the grounds of appeal concisely and precisely, not later than 21 days from the date of the decision under reference being notified to the party wishing to appeal.

(aa) Every notice of appeal referred to in paragraph (a) shall be accompanied by—

(i) a statement of case; and

(ii) where necessary, any witness statement, with copy to all relevant parties.

(ab) A statement of case shall contain precisely and concisely—

(i) the facts of the case;

(ii) the grounds of appeal and the arguments relating thereto;

(iii) submissions on any point of law; and

(iv) any other submissions relevant to the appeal.

(ac) Any witness statement shall contain a signed statement by a witness certifying that the witness statement faithfully reproduces the facts obtained from the examination of records, statements or other documents or from any other source in relation to the appeal before the Tribunal.

(ad) Any party served with a copy of the notice of appeal, statement of case and any witness statement shall, within 21 days of receipt thereof, forward his reply and comments thereon to the Tribunal, with copy to the appellant.

(ae) The appellant may, within 21 days of receipt of the reply and comments, submit any reply and comment thereon to the Tribunal with copy to all relevant parties.

(b) Where a decision referred to in paragraph (a) is one which is not, under the relevant Act, required to be notified to the person wishing to appeal, he shall deposit the notice and grounds of appeal with the Secretary not later than 21 days from the date on which public notice of the decision was given.

(c) Any proceedings before the Tribunal, other than an appeal under section 4 (1), shall be initiated by way of proecipe and affidavit within 21 days of the date when the cause of action arose.

(5) A party before the Tribunal may be represented by a barrister or an attorney or, with the leave of the Tribunal, be assisted by a person having expertise in the subject matter of the appeal.

(6) The Tribunal may—

(a) make such orders for requiring the attendance of any person or the production of any article or document as it thinks necessary or expedient; and

(b) take evidence on oath and, for that purpose, administer an oath.

(7) The Tribunal shall make a determination not later than 90 days after the start of the hearing of the appeal, except where there is a valid reason, and with the consent of the parties.

(8) The Tribunal may, upon consideration of the grounds of appeal set out in the notice of appeal and the objections made against the appeal, dismiss the appeal, where it appears to the Tribunal that it is trivial, frivolous or vexatious.

(9) Any person who—

(a) wilfully fails to attend a sitting of the Tribunal on being required to do so;

(b) refuses to take an oath before the Tribunal or to answer fully and satisfactorily to the best of his knowledge and belief any question lawfully put to him in any proceedings before the Tribunal or to produce any article or document when required to do so by the Tribunal;

(c) knowingly gives false evidence or evidence which he knows to be misleading before the Tribunal; or

(d) at any sitting of the Tribunal—

(i) wilfully insults the Chairperson, the Vice-chairperson or a member; or

(ii) wilfully interrupts the proceedings, or commits any contempt, of the Tribunal,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding 12 months.

(10) (a) The Tribunal may make such order as it thinks fit as to the costs payable by the losing party.

(b) An order made under paragraph (a) may be enforced by the other party in the same manner as an order for costs in proceedings before a Magistrate.

[S. 5 amended by s. 16 of Act 18 of 2016 w.e.f. 1 October 2016.]

6. Appeal to Supreme Court

(1) (a) Any party who is dissatisfied with the final decision of the Tribunal, relating to an appeal under section 4, as being erroneous in point in law may appeal to the Supreme Court.

(b) Any party wishing to appeal under paragraph (a) shall, within 21 days of the date of the final decision of the Tribunal, give notice in writing of such appeal to the Secretary and lodge his appeal in the Registry of the Supreme Court.

(2) An appeal under this section shall be prosecuted in the manner provided by rules in respect of an appeal from the final judgement of a District Court in civil matters.

7. Rules

(1) The Tribunal may make such rules for the purpose of the institution and hearing of appeals before the Tribunal as it thinks fit.

(2) Any rules made under subsection (1) may provide for the taking of fees or the levying of charges.

8. ***

9. ***

10. ***

Schedule (Section 5(4)(a))

Environment and Land Use Appeal Tribunal

Notice of appeal under section 5(4)(a) of the Environment and Land Use Appeal Tribunal Act

1. I/We _____

(name of appellant(s))

_____

of _____

(address)

_____

holder(s) of National Identity Card number(s) _____ hereby appeal against the decision, order, notice, determination or non-determination of—

(a) the _____

(b) the _____

(c) _____

dated _____

2. Particulars of the decision, order, notice, determination or non-determination against which appeal is made—

(a) _____

(b) _____

(c) _____

3. Grounds of appeal *(to be set out clearly and concisely)*—

(a) _____

(b) _____

(c) _____

(Please attach separate sheet if additional space is required)

Name of attorney/barrister representing the appellant(s) _____

Address of attorney/barrister _____

_____

Signature of appellant(s)

_____

Date

For official use

Date on which application was filed _____

Name of receiving officer _____

_____

Signature

_____

Date