

**MEFFLIN L J H & ORS NEW MAURITIUS HOTELS LIMITED**

**2009 SCJ 222**

**In Chambers**

**THE SUPREME COURT OF MAURITIUS**

**In the matter of:-**

**L.J.H. Mefflin & Ors**

**Applicants**

**v.**

**New Mauritius Hotels Limited**

**Respondent**

**In the presence of:-**

1. The Minister of **Environment** and National Development Unit
2. The Director of **Environment** and National Development Unit
3. The Road Development Authority
4. Arup SIGMA Ltd
5. The Pamplemousses/Rivière du Rempart District Council

**Co-Respondents**

**JUDGMENT**

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The respondent has embarked on a project of pulling down its existing hotel at Trou aux Biches and building a new one on a larger area. This project has resulted in the realignment of the existing Trou aux Biches coastal road. Before embarking on the project, the respondent has, in accordance with the **Environment** Protection Act 2002 (the Act), applied for an EIA licence and submitted an EIA report to the second co-respondent. Some of the applicants, who all live in Morcellement Jhuboo, Trou aux Biches, objected to the application for the EIA licence after public comments were called for. The second co-respondent called for additional information from the respondent, and an additional report including mitigating measures was submitted. The application and all the comments and documents were submitted to the EIA Committee set up under the Act. After taking into consideration the recommendations of the EIA

Committee, the first co-respondent approved the issue of an EIA licence on certain conditions. On 18 February 2008, an EIA licence was issued to the respondent subject to no less than twenty-seven conditions.

The present application is one for the issue of an interlocutory order of injunction *“restraining and prohibiting the respondent, its agents or préposés, from proceeding with road construction works of any nature on or over the natural wetlands and/or undertaking any backfilling of wetlands on its project site at Coastal Road, Trou aux Biches”*.

The affidavits and other documents placed before me span over some seven hundred pages as well as a 5-minute video recording. The main grievances of the applicants seem to be the following -

- (a) the EIA licence has been obtained on the basis of an EIA report submitted by the respondent and fraught with fraudulent, forged and misleading information;
- (b) the respondent has fraudulently located the road on the wetlands instead of between the wetland and the pond;
- (c) bringing the road realignment on the wetlands or even close to the wetlands entails risks of adverse impact on those wetlands;
- (d) the respondent has breached conditions 2, 6, 7 and 18 of the EIA licence which read as follows -

- 2. *The development shall be undertaken as per the mitigating measures stated in the EIA report and additional information submitted unless as otherwise advised herein*
- 6. *No backfilling of the wetlands shall be allowed. A 30 m buffer shall be observed from the edges of the wetlands.*
- 7. *The construction of the bridge shall not have any negative impact on the wetland and shall not impede overflow during rainstorms.*

18. *During the construction phase, the site of works shall be properly fenced and maintained so as to prevent any construction material and debris to have access to the wetlands and into the sea.*

An obscure paragraph of the lengthy affidavits of the applicants refers to the “*higher traffic noise to residents of Morcellement Jhuboo*”.

It is appropriate at the very outset that I stress what the present application is not about. The present application is not an appeal from the decision to issue the EIA licence. This is a matter for the **Environment** Appeal Tribunal (the EAT) and I understand that some of the applicants are amongst those who have appealed to the EAT which has reserved its ruling after hearing arguments on an issue of law on 03 April 2009.

Nor is the present application one for a judicial review of the decision to grant the EIA licence. A Judge in Chambers has no such jurisdiction. The jurisdiction that is hereby being invoked is that of the Judge in Chambers to grant interlocutory injunctive relief.

It appears from the affidavits placed before me that further to a request by the respondent – which was not made a party to the appeal before the EAT – to commence works on the project, it was informed by the first co-respondent on 17 April 2008 of the appeal lodged before the EAT and that any commencement of works before the determination of the appeal would be at the risk and peril of the respondent. In fact, works have already started and are being closely monitored by the second co-respondent and his officers and, as from 15 July 2008, by the Monitoring Committee set up under section 28A of the Act, to ensure that conditions of the EIA licence are complied with. By the time the application was heard at the end of last month, it appears that substantial works in connection with the realignment of the road, including a bridge over part of a particular wetland, have already been completed and the wetland restoration programme as envisaged in the EIA report was being implemented. However, the affidavit evidence on behalf of the first and second co-respondents shows that mitigating measures were taken during the progress of the works, namely -

- (a) geo-textile screens had been fixed and maintained along the edge of the wetland and Morcellement Jhuboo and the man-made ponds;

- (b) screens were placed along the edge of the wetland and the boundary of Morcellement Jhuboo to prevent dust nuisance in the wetland and nearby houses;
- (c) geo-textile materials were placed in the wetland to prevent entrainment of sediments; and
- (d) a drain had been constructed across the construction platform to allow free water flow in the wetland and prevent death of aquatic life.

With regard to the merits of the application itself, all the averments of fraud, forgery and misrepresentation have been denied. It was admitted that part of the wetland had been wrongly labelled as a pond in a plan submitted on behalf of the respondent. But the second co-respondent has contended that it had dealt with it as a wetland and had provided for mitigating measures accordingly; and no development had been proposed in that part of the wetland which had been wrongly labelled as a pond.

With regard to wetlands generally, the affidavit evidence shows that before the EIA licence was issued, the National Parks and Conservation Service, which is responsible for wetlands, was consulted and had no objection to the implementation of the project. As regards the realigned road, it had to cross one of the wetlands. This necessitated the construction of a bridge on piles on that wetland. In that connection a temporary rock fill platform was built. Now that that part of the works has been completed, the rock fill platform has been removed, so says the affidavit on behalf of the second co-respondent, and the wetland has been reinstated. The applicants cannot therefore be heard to say that there has been backfilling of the wetland in breach of the conditions of the EIA licence. Nor have they established that the 30 metre buffer zone was not being observed from the edges of the wetlands.

As indicated earlier, a passing reference has been made to the emission of noise. The EIA licence has provided for a 20 metre buffer zone from the proposed realigned road and Morcellement Jhuboo as a no construction zone which would be kept as a green belt to accommodate 3 to 4 rows of tall trees at 5 metres intervals as recommended by the Conservator of Forests. The appellants have failed to establish

that the level of noise emanating from the realigned road would fall foul of the prescribed exposure limits.

In the circumstances, the application is refused with costs and I certify as to counsel.

**K.P. Matadeen  
Senior Puisne Judge**

**06 July 2009**

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**For Applicants : Mr G. Ramdewar, S.A.  
Mr H. Lassemillante, of Counsel**

**For Respondent : Mr G. Rivalland, S.A.  
Mr M. Sauzier, of Counsel**

**For Co-Respondents:  
Nos. 1 & 2 Principal State Attorney  
Mrs P.D. Chittoo, Principal State Counsel**

**For Co-Respondent : Mr G. Ng Wong Hing, S.A.  
No. 4 Mr P. Speville, of Counsel**

**For Co-Respondent : Mr A.O. Jankee, Attorney-at-Law  
No. 5 Mr N. Kistnen, of Counsel**