

5 ST JAMES COURT

GONESS S. & ORS v THE MUNICIPAL COUNCIL OF VACOAS-PHOENIX

2023 SCJ 247

SUMMARY

Facts

This was an application for a judicial review of the respondent's decision and decision-making process, granting a Building and Land Use Permit (BLUP) to the co-respondent to convert an existing building into a store and for depot of vehicles at Petit Camp, Phoenix, subject to the following conditions:

- (1) loading and unloading in front of the residential area would not be allowed;
- (2) no access for heavy vehicles at the beginning of the residential zone would be allowed;
- (3) no repairs of vehicles would be allowed onsite; and
- (4) the depot to be limited to 6 lorries only.

Leave to apply for judicial review was granted to applicants on 2nd June 2021. The applicants prayed for an order granting a judicial review of the respondent's decision and decision-making process and a writ of certiorari directing the respondent to bring up the records in respect of the aforesaid decision in order to have same quashed, reversed, set aside or otherwise dealt with as this court may deem fit.

The applicants averred that the decision of the respondent was tainted with illegality, irrationality and procedural impropriety but the ground of procedural impropriety was dropped at the hearing.

The Applicants' contention was that the respondent's decision was illegal in that it failed to comply with: (1) the Technical Sheet (Industrial & Commercial Roads) of the Planning Policy Guideline 1 (PPG1) under Section 13(2) of the Planning and Development Act (PDA); and (2) the Outline Planning Scheme (OPS) provided for under Section 14(3) of the Town and Country Planning Act (TCPA).

As for the ground of irrationality, it was submitted that the conditions upon which the BLUP was granted were unreasonable inasmuch as the site was in a predominantly residential area and that the co-respondent's non-residential activity, that is, its operation of heavy vehicles in and out of the site, would cause disruption to the peaceful and quiet environment.

Issue(s)

Whether the respondent's impugned decision was tainted with illegality and irrationality?

Held

This application for judicial review of the respondent's decision and decision-making process was set aside and the court held that:

- (i) Regarding the applicant's allegation of illegality, it cannot read into the law more than what it says inasmuch as the respondent acted in compliance with the relevant provisions of the law when considering the present BLUP application.
- (ii) As regards the ground of irrationality,
 - the existence or non-existence of factual objections were matters better left to the judgment of the respondent to whom the law has entrusted the decision-making power, so long as it does not act perversely; and
 - they are satisfied that the conditions attached to the BLUP granted to the co-respondent are far from being irrational. Instead, it appears that they have been designed to attenuate the applicants' specific grievances.

This summary is provided to assist in understanding the Court's decision. The full judgment of the Court is the only authoritative document.

Short Summary

The applicants' contention was that the decision of the respondent, granting the co-respondent's a Building and Land Use Permit for the conversion of an existing building to be used as a store and for depot of vehicles, is tainted with illegality and irrationality in that it failed to comply with the planning Policy Guideline 1 (PPG1) of the Planning and Development Act and the Outline Planning Scheme (OPS) of the Town and Country Planning Act. The court highlighted that the PPG1 is used as design guidance for industrial and commercial roads, and not in assessing a BLUP application while the OPS only set out that the local authority shall comply with the guidance and shall not approve any plan for development works that contravene the scheme. The court further emphasized that the applicants' prime objections to the BLUP application essentially rest upon the issue of disturbance and that was the reason as to why the BLUP application was approved with several conditions designed specifically to to attenuate the applicants' specific grievances. The Court found no merit in the applicants' case and set aside the judicial review application.

This summary is provided to assist in understanding the Court's decision and should not be cited as an authority. It does not form part of the reasons for that decision. The full opinion of the Court is the only authoritative document.