

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

Judicial Review No: HBJ 03 of 2021

BETWEEN: THE STATE

AND: DIRECTOR OF DEPARTMENT OF TOWN AND COUNTRY PLANNING
FIRST RESPONDENT

AND: SIGATOKA TOWN COUNCIL
SECOND RESPONDENT

AND: DIRECTOR OF THE DEPARTMENT OF ENVIRONMENT
THIRD RESPONDENT

AND: EXECUTIVE OFFICER OF THE SIGATOKA TOWN COUNCIL, Civil
Building, Queens Road, Sigatoka.
FOURTH RESPONDENT

AND: CHRISTINE BADIA NKANKA aka CHRISTINE SILVIE BADIA
FIRST INTERESTED PARTY

EX-PARTE: CRAIG AND EVETTE DE LA MARE
APPLICANTS

Counsel Appearing : Mr. De La Mare - In Person for the Applicants
 : Mr. J. Mainavolau for the first and third Respondents
 : Mr. Singh for the second and fourth Respondents
 : Ms. Ali for the Interested Party
Date of Hearing : 25 May 2023
Date of Ruling : 16 August 2023

RULING

1. What was originally before me was an application seeking leave for Judicial Review. The parties had filed submissions on the application, and I was set to deliver a Ruling when the Applicants filed an application for specific discoveries on 26 January 2023. The specific documents which are sought are:

2. The specific documents which are sought are:
- a) a certified copy of the approved Maui Bay Subdivisional Scheme Plan and its conditions as contained in the original approved Subdivisional Scheme Plan SLB 7613 or any other amended Scheme Plan relating to the same area.
 - b) all development applications including the outline applications, approved building plans, the approved as built plans, the rezoning applications and approvals, the sewage treatment plant approvals and leach lines as approved by the Ministry of Health and required before a completion certificate could be issued, the public notification and public consultation participation exercise and any other document not listed here but required for the approvals granted with regards to all development including the Building, the swimming pools and the tennis court.
 - c) and the relaxations of the General Provisions granted for the Plan approvals and rezoning approvals granted to the 1st Interested Party for CT 40987 on DP 10404 Lot 2 Maui Bay Estates. (further referred to as Lot 2).
 - d) particulars of documents and information required:
 - a. the date of an copies of clear plans of the outline application, the Approved Building plans and the as built plans for Lot 2 clearly showing all dimensions, setbacks and details for each floor as required by law including but not limited to relaxations granted in terms of the General Provisions for:
 - Relaxation in terms of 30 meter foreshore access reserve.
 - Relaxations in terms of Plot ratio of 20% for the building including all levels and the tennis court which is a development on its own.
 - Relaxation in terms of number of units allowed on a 1400m² lot in a residential zone or what special use zone was applied with the minimum site area requirement.
 - Relaxation in terms of number of rooms allowed to be built on a 1400m² lot in a none sewerred area.
 - Relaxation of multi storey developments in terms of the General Provisions for residential areas including the minimum site area that has been relaxed to allow this development.
 - Relaxations of the side boundaries for a 3 or 4 story building, the decks are within 1 meter of the side boundary line and this now has a top floor that is being utilized for entertainment.
 - Relaxations of the front and side boundaries that allows for a tennis court development to be constructed in contravention of the building line setbacks.

- Relaxations of the requirement for the 5 car parks turning area and delivery entrance.
 - Relaxation of the required privacy of neighbour's lots that must be taken into account as per the Public Health Act.
 - A copy of the approved CBH approval for sewage treatment plant as required by the plan approvals showing the leachlines.
 - Approved water supply as per the PWD requirement.
- b. the application to rezone in full and the Approved Rezoning of Lot 2 and any other correspondence for the rezoning application.
- c. A document containing the list of all relaxations granted for the building development on Lot 2 for 1400m² site that do fully comply with the General Provisions in particular.
- d. All public participation that was conducted informing lot owners of the intended relaxations before the said approvals were granted.
- e. Any and all information pertinent in order to resolve the issues fairly and justly.
- e) that the third Respondent does within 7 days of an order being made provide the Applicants to the Applicants satisfaction the following:
- a) all applications, documents, plans, and approvals in the possession of the Department of Environment in relation to the application made to the department for approvals under the Environmental Act relating to the Development on CT 40987 on DP 10404 knowns as Lot 2 Maui Bay Estates that have not yet been disclosed.

On the grounds that;

- f) this is a Judicial Review application of great Public importance where the Public Authorities are being accused of failing to follow procedures and the law of carrying out developments after the Constitution of a Town Planning Area and an Approved Scheme Plan that is fully zoned within that Town Planning area. Only with full disclosure of the relevant facts and documents requested can the Honorable Court make a just and fair determination of the facts.
- g) that in failing to order the production of the relevant documents and facts requested would be in direct violation of the Constitution of Fiji under Section 25.

- h) that each Respondent in a Judicial Review proceeding is under a duty to make full disclosure to the Court of material facts, and or documents and known impediments to the claim.
- i) that the Honorable Court has an inherent duty in Judicial Review proceedings, if documents are not being disclosed that are pertinent to the proceedings to order their production to ensure it has all the relevant evidence and facts before it to determine the case fairly.
3. I am of the view that these applications are misconceived at leave stage. At leave, all that the Applicants need convince me is that they have an arguable case.
4. This application relates to, yet another one of those Maui Bay cases and the status of the Special Development Guidelines for Maui Bay (“SDGMB”).
5. I understand that the application for specific discoveries was prompted by my Ruling in **State v Director of Town & Country Planning & Ors, ex-parte David Peterson & Anor**; Judicial Review No: HBJ 06 of 2020 (18 January 2023).
6. In that case, I had reached some conclusions in law which are relevant in this case.
7. However, the one point I made which sticks out, and which is the reason why I would grant leave in this case, is that there is a legitimate expectation that the SDGMB will be taken into account whenever the DTCP is being called upon to exercise his discretion in relation to any development application in the Maui Bay, and which proposed development will entail a departure from the SDGMB.
8. The source of that legitimate expectation is not in the Town Planning Act, or the General Provisions. Rather, the source of that legitimate expectation is in the DTCP’s actions in creating the SDGMB as a development guideline.
9. I am inclined to dismiss the application for specific discoveries. However, I am inclined to grant leave, bearing in mind that the threshold for leave is that the applicants must show an arguable case. I feel that the respondents are entitled to costs which I summarily assess at \$500 – 00 (five hundred dollars) each




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Anare Tuilevuka
JUDGE

16 August 2023