Trinity Term
[2024] UKPC 19
Privy Council Appeal No 0070 of 2023

JUDGMENT

Eco-Sud and two others (Respondents) *v* Minister of Environment, Solid Waste and Climate Change and another (Appellants) (Mauritius)

From the Supreme Court of Mauritius

before

Lord Hodge
Lord Leggatt
Lord Burrows
Lord Stephens
Lady Rose

JUDGMENT GIVEN ON
4 July 2024

Heard on 5 March 2024

Appellants
Alain Choo-Choy KC
Annabelle Misha Odile Ombrasine
(Instructed by RWK Goodman LLP (London))

1st Respondent
Stephen Tromans KC
Sanjay Bhuckory SC
Peter Lockley
Anne-Sophie Jullienne
Sanjana Bhuckory
(Instructed by Citilaw Chambers (Mauritius))

2nd Respondent
Patrice Doger de Spéville SC
Angélique A Desvaux de Marigny
(Instructed by Sheridans (London))

LORD STEPHENS:

1. Introduction

1. Under section 15(2)(b) of the Environmental Protection Act 2002 ("the EPA 2002"), the proponents of certain types of projects are required to apply for and obtain an Environmental Impact Assessment licence ("an EIA licence"), the issuance of which is approved or rejected by the Minister of Environment, Solid Waste Management and Climate Change (the "Minister"). The issue in this case is whether an environmental association, Eco-Sud, has standing to appeal the decision of the Minister to approve the issue of an EIA licence to Pointe d'Esny Lakeside Company Limited ("the Developer") for a major construction project on land at Pointe d'Esny, Beau Vallon, Mauritius ("the Project"). Such appeals are brought in the Environment and Land Use Appeal Tribunal ("the Tribunal"). If Eco-Sud has standing then, in summary, the substantive issue which it wishes to raise before the Tribunal is whether the Minister should have decided not to approve the issue of an EIA licence because of the environmental impact of the Project on wetlands both within and in proximity to the development site.

2. The standing of those persons who may appeal against the decision of the Minister to issue an EIA licence is limited by section 54(2) of the EPA 2002. The version of section 54(2) of the EPA 2002 in force at the date of filing of Eco-Sud's appeal to the Tribunal provided that:

> "Where the Minister has decided to issue an EIA licence, any person who –
>
> (a) is aggrieved by the decision; and
>
> (b) is able to show that the decision is likely to cause him undue prejudice
>
> may appeal against the decision to the Tribunal."

3. In a ruling dated 6 October 2021 the Tribunal (Mrs V Phoolchund-Bhadain, Mr Pravin K Manna and Mr Sujoy Busgeeth) held that Eco-Sud was not a person "aggrieved by the decision" within section 54(2)(a) and was not "able to show that the decision is likely to cause [it] undue prejudice" within section 54(2)(b). Accordingly, the Tribunal set aside Eco-Sud's appeal. It did not address the merits of Eco-Sud's appeal in its ruling.

4. In its judgment dated 18 July 2023, the Supreme Court (Hon SBA Hamuth-Laulloo, Judge and Hon M Naidoo, Judge) set out its interpretation of the requirements in section 54(2)(a) and (b) of the EPA 2002 and quashed the Tribunal's order. The Supreme Court remitted the case back to the Tribunal for it to decide whether Eco-Sud had sufficient standing in the light of the principles laid down in its judgment.

5. The Minister and the Ministry of Environment, Solid Waste Management and Climate Change ("the Ministry") now appeal to the Board pursuant to section 81 of the Constitution of the Republic of Mauritius. The Minister and the Ministry contend that Eco-Sud lacks standing to appeal to the Tribunal under limbs (a) and (b) of section 54(2) of the EPA 2002. The first respondent, Eco-Sud opposes the appeal and the second respondent, the Developer, supports the appeal. The third respondent, the Ministry of Agro-Industry and Food Security, made no submissions on the hearing of the appeal.

2. The Ramsar Convention

6. Since 2002 Mauritius has been a contracting party to the Convention on Wetlands of International Importance especially as Waterfowl Habitat, known as the Ramsar Convention.

7. Article 2 of the Ramsar Convention provides that "[e]ach Contracting Party shall designate suitable wetlands within its territory for inclusion in a List of Wetlands of International Importance, …." Mauritius has designated a mangrove forest at Pointe Jerome as a Ramsar-protected site ("the Ramsar Site"). The Ramsar Site, sometimes referred to as Pointe d'Esny Ramsar Site, is within 235 metres of the Project's development site.

8. In 2004 the government set up the National Ramsar Committee as a non-statutory advisory committee to assist in the domestic implementation of the Ramsar Convention. It is chaired by the Permanent Secretary of the Ministry of Agro-Industry and Food Security and comprises representatives of various Ministries and Departments.

3. Factual background

(a) Eco-Sud

9. Eco-Sud is a non-governmental organisation which is registered as an association under the Registration of Associations Act 1978. In accordance with its objects, as set

out in article 3 of its Rules of Association, it is an environmental association which advocates, and takes measures, for the protection of the environment in Mauritius.

10. Eco-Sud's expertise and standing are evidenced, for instance, by its participation in a United Nations Development Programme ("UNDP") project on "mainstreaming biodiversity". One of the objectives of the UNDP's project was the "Development of Management and Action Plan for the Pointe d'Esny Ramsar site". Another example of Eco-Sud's expertise and standing is its participation in a project in partnership with the Ministry of Ocean Economy, Marine Resources, Fisheries and Shipping. The project concerned the implementation of a "Voluntary Marine Conservation Area", as part of efforts to restore the fauna and flora of the lagoon of Pointe d'Esny.

11. Eco-Sud has a considerable track record of undertaking work to preserve wetlands around Pointe d'Esny. For instance, (a) since 2012 it has organised regular planting activities (as well as clean-ups) in the Ramsar Site which furthers the protection of the mangroves there; (b) it has undertaken coral farming in and around the Pointe d'Esny lagoon; and (c) it has monitored the Pointe d'Esny lagoon as part of its "Lagon Bleu" project to further the protection of marine fauna and flora.

12. Eco-Sud has had considerable involvement in opposing the issuance of an EIA licence to the Developer. It made objections and representations as part of the procedure which preceded the decision of the Minister to issue an EIA licence. In making those objections and representations it not only relied on its own expertise and standing but also on an independent expert's report ("the Expert's Report"): see para 26 below.

(b) The Environmentally Sensitive Areas Classification Report

13. On 15 June 2009, the Ministry published a report entitled "Environmentally Sensitive Areas Classification Report", prepared by NWFS Consultancy, which identified the location of Environmental Sensitive Areas ("ESAs") in Mauritius ("the ESA Study"). The ESA Study explained, amongst other matters, the crucial role which wetlands, sea grass beds, coral reefs and mangrove areas have in the ecosystem, and the benefits they generate for the human population, for instance, protection of biodiversity, pollution entrapment, protection of fisheries, nutrient dispersal and cycling, scientific discovery, recreation experiences, and cultural, intellectual, and spiritual inspiration.

14. The Expert's Report (see para 26 below) provides evidence that there are a number of wetlands near the Project site which were not identified in the ESA Study.

(c) The Developer

15. The Developer as the owner, or the person having the charge management or control of the Project, is, to use the statutory language in section 3 of the EPA 2002, the "proponent" of an "undertaking".

(d) The Project

16. The Project is for the construction of an inland residential development comprising a residential mix of 172 villas, 278 apartments and penthouses, 100 duplexes, 105 services lots with associated facilities. The Project site extends to 70.9 hectares.

17. The Project site is located behind the coastal road bordering the Pointe d'Esny lagoon, and within 235 metres of the Ramsar Site.

18. The Project site is not only near the Ramsar Site, but it also comprises several ESAs in the form of wetlands.

(e) The Developer's EIA licence application and the response of Eco-Sud and of the National Ramsar Committee

19. In or around November 2017, the Developer submitted its EIA licence application to the Minister.

20. On 4 December 2017, the Ministry published a notice for public inspection of the Developer's EIA licence application under section 20 of the EPA 2002.

21. On 21-22 December 2017, Eco-Sud filed comments with the Ministry in which it objected to the Developer's EIA licence application by filing with the Ministry its comments on the application. In summary Eco-Sud contend that there is an interconnection between the wetlands in the area of the Project site which will be disrupted by the Project with devastating consequences to the ecosystem of the Ramsar Site. Furthermore, Eco-Sud contend that the larger network of mangrove forest, lakes, ponds, and rivers, which they say has maintained the quality of the coral reefs in the nearby fishing reserve of Grand Port, will be adversely affected by the Project. Accordingly, in addition to the Project's adverse impact on the Ramsar Site, Eco-Sud contend that both the coral reefs and the fishing reserve will be adversely impacted. Finally, it is one of Eco-Sud's central objections that an EIA licence should not be

granted in the absence of a proper assessment of the impact of the Project on the fragile ecosystem of Pointe D'Esny.

22. At a meeting held on 10 January 2018 between the Developer and Eco-Sud, Eco-Sud raised several issues with the Project, including the proximity of the Project to ESA wetlands and the fact that the Project could have the effect of disconnecting ESA wetlands from the wetlands of the Ramsar Site.

23. On 7 February 2018, the Developer replied to Eco-Sud's public comments.

24. Eco-Sud continued to raise its concerns about the Project thereafter, most notably through:

(i) a meeting with the Honourable Mahendranuth Sharma Hurreeram (Member of Parliament, elected in the constituency of the Project site).

(ii) a communiqué published in the daily newspaper L'Express on 26 April 2018 calling on the Minister and Ministry to, amongst other matters, freeze all projects that could have a negative impact on wetlands until a Bill was discussed and voted on in Parliament that would enhance protections for ESA sites.

(iii) an open letter published in L'Express to all members of Parliament on 30 April 2018, calling on them to reform environmental laws to give better protection to ESAs.

25. On 28 September 2018, the National Ramsar Committee gave a clearance to the Developer in respect of the Project, subject to six conditions The sixth condition, which reflected Eco-Sud's call not to grant an EIA licence in the absence of a proper Environmental Impact Assessment ("EIA"), provided that the Environment and Sustainable Development Division of the Ministry be requested to undertake an EIA.

26. On 13 December 2018, Eco-Sud sent to the Ministry's EIA Committee the Expert's Report. This was a report which Eco-Sud had commissioned from an expert in geography and wetlands acting for and on behalf of the South African-based "Centre for Wetland Research and Training". The Expert's Report raised concerns about the impact that the Project might have, inter alia, on the Ramsar Site and on the Pointe d'Esny Lagoon, and further advised that the "precautionary principle" ought to be applied. The Expert's Report identified a number of wetlands within or close to the Project site which were not identified in the Developer's EIA licence application (and which do not appear

in the ESA Study referred to at para 13 above). Overall, the Expert's Report supported Eco-Sud's position against the grant of an EIA licence.

27. By letter dated 4 January 2019 to Eco-Sud, the Ministry acknowledged receipt of the Expert's Report, stating that "the concerns raised are being taken into consideration while processing the EIA [licence] application."

(f) The Minister's decision to approve the issue of an EIA licence and the conditions attached to it

28. On 31 January 2019, the Minister decided to approve the issue of an EIA licence for the Project to the Developer. The EIA Licence was subject to 48 conditions, including all the conditions attached to the clearance from the National Ramsar Committee dated 28 September 2018 except for the sixth condition requiring the Environment and Sustainable Development Division of the Ministry to carry out its own EIA of the Project. This EIA has never been carried out.

4. Relevant legislative provisions

(a) The Interpretation and General Clauses Act 1974

29. Section 2 of the Interpretation and General Clauses Act 1974, provides that in every enactment and other public document the word "'person' and words applied to a person or individual shall apply to and include a group of persons, whether corporate or unincorporate". Accordingly, Eco-Sud is a person within section 54(2) of the EPA 2002.

(b) The earlier Environmental Protection Act

30. The Environment Protection Act 1991 (the "EPA 1991") was the first comprehensive enactment in Mauritius dedicated to substantive and procedural environmental law. It set up the first specialist environmental tribunal, the Environment Appeal Tribunal (the "EAT 1991"). The EAT 1991 had jurisdiction to hear appeals from the decision of the Minister to approve or reject an EIA licence. Section 46(2) of the EPA 1991 provided that "any person" may appeal to the EAT 1991 within 30 days of the Minister's decision. There was no requirement that the person bringing the appeal was aggrieved by the decision or was able to show that the decision was likely to cause them undue prejudice.

(c) Repeal of the EPA 1991 and the enactment of the EPA 2002

31. The EPA 1991 was repealed by the EPA 2002.

32. As originally enacted the EPA 2002 replaced the EAT 1991 with a new Environment Appeal Tribunal ("the EAT 2002"). Appeals in relation to the approval or rejection of an EIA licence under section 23 of the EPA 2002 were to be brought in the EAT 2002. As originally enacted the test for standing remained the same i.e. any person could appeal within 30 days of the Minister's decision.

(d) Amendments to the EPA 2002, the requirement of standing to bring an appeal to the Tribunal and the tightening of time limits

33. The EPA 2002 has been amended on several occasions since its enactment. The following amendments are relevant to this appeal:

(i) Section 3(1) of the Environment and Land Use Appeal Tribunal Act 2012 (Act 5 of 2012) ("the 2012 Act") established the Tribunal. For the purposes of this appeal and subject to transitional provisions, the amendment meant that appeals from the decision of the Minister to approve or reject the issue of an EIA licence were now to be brought to the Tribunal rather than to the EAT 2002.

(ii) The provisions of section 54 of the EPA 2002 were replaced. The new section 54(2) introduced, for the first time, standing requirements for those bringing an appeal against the Minister's decision to approve the issue of an EIA licence: see para 2 above. No such requirements were imposed in respect of challenges to the Minister's decision to reject an EIA licence application.

(iii) More restrictive time limits have been introduced. For instance, there were no time limits for filing documentation in relation to an appeal in the EPA 1991, in the EPA 2002 as originally enacted or in section 5(4) of the 2012 Act as originally enacted. However, section 5(4) of the 2012 Act was amended by section 16(a) of the Finance (Miscellaneous Provisions) Act 2016 (Act No 18 of 2016) so that it now requires an appellant to deposit within the 21 day period for lodging an appeal their notice and grounds of appeal and a statement of case containing "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". Section 5(7) of the 2012 Act also introduces a time limit of 90 days from the start of the hearing for the Tribunal to make a determination.

(e) The statutory purpose of the EPA 2002, the obligation of environmental stewardship and the statutory purpose of relevant amendments to the EPA 2002

34. It is not necessary to look to external aids to ascertain the legislative purpose of the EPA 2002. The purpose of protection of the environment is clearly discernible from both its short and long titles. The long title states that it is:

> "An Act to provide for the protection and management of the environmental assets of Mauritius so that their capacity to sustain the society and its development remains unimpaired and to foster harmony between quality of life, environmental protection and sustainable development for the present and future generations; more specifically to provide for the legal framework and the mechanism to protect the natural environment, to plan for environmental management and to coordinate the inter-relations of environmental issues, and to ensure the proper implementation of governmental policies and enforcement provisions necessary for the protection of human health and the environment of Mauritius."

Accordingly, the statutory purposes identified in the long title include: (a) the protection and management of the environmental assets of Mauritius; (b) fostering harmony between quality of life, environmental protection and sustainable development for the present and future generations; and (c) the provision of a legal framework and a mechanism to protect the natural environment including enforcement provisions.

35. An indication of the importance attached to the legislative purpose of protection of the environment can be discerned from section 2 of the EPA 2002 which, under the heading of "Environmental Stewardship", declares:

> "… that every person in Mauritius shall use his best endeavours to preserve and enhance the quality of life by caring responsibly for the natural environment of Mauritius."

This obligation on every person in Mauritius remains in force without any amendment.

36. The legislative purpose in relation to the requirement of standing in section 54(2) of the EPA 2002 is to restrict persons who can bring an appeal to the Tribunal. The mischief sought to be remedied is to prevent abuse of the appeal process by busybodies interfering in things which do not concern them thereby inhibiting development projects which are desirable and beneficial for the economy. However, the legislative purpose in

introducing requirements as to standing is to be understood within the larger purpose of the EPA 2002 which remains the protection of the environment.

37. The legislative purpose for tightening the time limits is simply to ensure expedition. No wider purpose can be discerned.

(f) The interpretation section in the EPA 2002

38. Section 3 of the EPA 2002, under the heading of "Interpretation" provides, amongst other matters, that:

> (i) "EIA" means an environmental impact assessment;
>
> (ii) "EIA licence" means a licence issued under section 23(8);
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> (iii) "environment" includes (a) land, air, water, or any one of, or any combination of, these media; (b) all living organisms; (c) any built-up environment;
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> (iv) "environmental impact assessment" means a document containing the information required under section 18: see paras 42-43 below;
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> (v) "person responsible" means the owner, or the person having the charge, management or control of an activity, enterprise, or undertaking;
>
> (vi) "proponent", subject to section 26, means a person who — (a) is the owner of, or who has the charge, management, or control of an undertaking; or (b) carries out or proposes to carry out an undertaking;
>
> (vii) "public comment" means a submission made under section 20 by any person, other than a public department, on an EIA;
>
> (viii) "undertaking" means such enterprise or activity, or any proposal, plan, or programme in respect of an enterprise or activity by a public department, local authority, or any person, as is prescribed in the First Schedule, and includes any modification, change, alteration or addition of an undertaking.

(g) The provisions in the EPA 2002 as to the institutions and persons with responsibility for the environment

39. The EPA 2002 sets up various bodies with responsibility for the environment. The most significant for the purposes of this judgment are (a) a Department of Environment within the Ministry administered by a Director of the Environment ("the Director"): see section 8; and (b) an EIA Committee: see section 22. The EIA Committee is obliged to examine applications for an EIA licence referred to it after review by the Director and is obliged to make such recommendations to the Minister as it thinks fit: see section 22(2).

(h) The requirement in the EPA 2002 to obtain an EIA licence

40. Section 15(2) of the EPA 2002 requires the proponents of certain types of undertakings, which are specified in Part B of the Fifth Schedule to the EPA 2002, to apply for and obtain an EIA licence prior to commencing the undertaking.

41. The Project is of a type specified in Part B of the Fifth Schedule as it is an undertaking involving a "[h]ousing project and apartments above 50 units within one kilometre of high water mark" and it does not fall within the exception of being a housing project implemented by the National Housing Development Company Ltd: see para 20 of Part B of the Fifth Schedule as amended. Accordingly, the Developer is prohibited from proceeding with the Project without an EIA licence and commits an offence if it does so.

(i) The provisions in the EPA 2002 as to an application for an EIA licence

42. Section 18(1) of the EPA 2002 provides that "[a] proponent applying for an EIA licence in respect of an undertaking specified in Part B … of the Fifth Schedule … shall submit to the Director an EIA report … accompanied by — (i) satisfactory proof of ownership of the undertaking; (ii) a site plan prepared and signed by a land surveyor; (iii) a non-technical summary of the report."

43. Section 18(2) of the EPA 2002 sets out all the matters which are to be contained in the EIA report. For instance, the report "shall contain a true and fair statement and description of the undertaking as proposed to be carried out by the proponent" and shall set out "the direct or indirect effects that the undertaking is likely to have on the environment."

(j) The provisions in the EPA 2002 as to public comment on an EIA report, review of the EIA report by the Director, consideration of the EIA licence application by the EIA committee and a recommendation to the Minister

44. Upon receiving an EIA report accompanying a proponent's application for an EIA licence, the Director must, pursuant to section 20 of the EPA 2002, open the EIA report for public inspection and set a deadline for the submission of public comments to the Ministry. The deadline may be extended under section 20(4) to afford a reasonable opportunity to "any person" to submit public comments on the EIA. The public are to be informed. There is no standing requirement for participation in the consultation process. Any person can participate at this stage.

45. After receipt of public comments, the Director then reviews an EIA licence application submitted by a proponent and determines its scope and contents. The Director then refers the EIA licence application and the public comments, together with such comments and observations as the Director thinks appropriate to make, to the EIA Committee for examination: see section 21 of the EPA 2002. Thereafter, the EIA Committee is required to examine the application and to make such recommendations to the Minister as it thinks fit: see section 22 of the EPA 2002.

(k) The provisions in the EPA 2002 as to the Minister's decision on an application for an EIA licence

46. The Minister is not obliged to follow the recommendation of the EIA Committee. Rather, section 23(1) of the EPA 2002 provides that the Minister shall, after taking into consideration the recommendations of the EIA Committee, make his decision on the EIA licence application. Section 23(2) in so far as relevant provides that "[t]he Minister may (a) … approve the issue of an EIA licence on such terms and conditions as he may deem appropriate; or (b) disapprove the EIA and reject the application."

47. Section 24(1) of the EPA 2002, as amended, provides that the Minister in considering approval of an EIA shall take account of several matters, including, for instance, "the measures proposed to avoid or minimise adverse effects on the environment, people or society."

48. Section 23(8) of the EPA 2002 provides that "[w]here an EIA is approved by the Minister, the Director shall issue an EIA licence on the terms and conditions specified by the Minister."

49. Section 23(6) of the EPA 2002 provides that "[s]ubject to an appeal … the decision of the Minister shall be final and binding."

(l) Provisions in the EPA 2002 and in the 2012 Act as to appeals from a decision of the Minister to approve the issue of an EIA licence

50. The 2012 Act, which came into force on 1 October 2012, established the Tribunal: see para 33(i) above.

51. The determination of an appeal to the Tribunal is by way of rehearing on the merits. Accordingly, the appeal to the Tribunal is an important limitation on the power of the Minister to decide to approve or reject the issue of an EIA licence. His decision to do so can be overruled by the Tribunal.

52. The 2012 Act makes provision for the way in which and the time within which an appeal may be lodged with the Tribunal: see para 33(iii) above.

53. Section 4(2) of the 2012 Act provides that the Chairperson of the Tribunal or, in his or her absence, the Vice-Chairperson, may upon the application of a party sit alone for the purpose of making orders in respect of any matter which is due to be heard by the Tribunal including an order in the nature of an injunction.

54. Section 5(3)(a) of the 2012 Act provides that any proceedings of the Tribunal shall be held in public.

55. Section 5(4) of the 2012 Act (as amended) makes provision for the filing of appeal documents:

(i) Section 5(4)(a) and (aa) makes provision for the filing of a notice of appeal together with a statement of case and any witness statement (see para 33(iii) above).

(ii) Section 5(4)(ad) requires any person served with a notice of appeal, statement of case and any witness statement to submit to the Tribunal, within 21 days of receipt of those documents, their reply and comments.

(iii) Section 5(4)(ae) permits any person served with a statement of reply under section 5(4)(ad) to submit within 21 days of receipt thereof a reply and comments.

56. Section 5(8) of the 2012 Act enables the Tribunal to dismiss an appeal where it appears to the Tribunal that it is trivial, frivolous or vexatious.

57. Section 56(3) of the EPA 2002, as in force at the relevant time, provided that subject to an appeal to the Supreme Court pursuant to section 57, a decision or finding of the Tribunal, on any cause or matter before it, shall be final and binding on the parties.

58. Section 57 of the EPA 2002, as in force at the relevant time, provided that "[a]ny party who is dissatisfied with the final decision of Tribunal, relating to an appeal, under section 56 as being erroneous in point of law may appeal to the Supreme Court."

(m) Further amendment to section 54(2) of the EPA 2002 made by the Finance (Miscellaneous Provisions) Act 2020

59. Section 18 of the Finance (Miscellaneous Provisions) Act 2020 (Act 7 of 2020) inserted an additional requirement as to standing into section 54(2) of the EPA 2002. In addition to the existing standing requirements, an appellant must now demonstrate that they have submitted a statement of concern in response to a notice published under section 20. This additional requirement was not in force on the date Eco-Sud lodged its appeal to the Tribunal on 28 February 2019. Accordingly, it cannot be taken into account in considering the true interpretation of section 54(2)(a) and (b) as at the date of Eco-Sud's appeal. However, for the sake of completeness, had this requirement been in force at the time of lodging the appeal, Eco-Sud would have satisfied it through the filing of its public comments: see paras 21-24 above.

5. Procedural history in relation to Eco-Sud's appeal to the Tribunal

60. On 28 February 2019, Eco-Sud lodged its appeal from the Minister's decision to approve the issue of an EIA Licence to the Developer. Eco-Sud appealed on the ground that the Developer's EIA licence application breached the requirements of section 18 of the EPA 2002 by, among other things, failing to: (i) contain a true and fair statement and description of the undertaking to be carried out because the Project site map failed to show numerous wetlands and peatlands, which were identified in the Expert's Report; and (ii) assess the impact of the Project on the Ramsar Site, the lagoon of Pointe d'Esny and the Grand Port Mahebourg fishing reserve.

61. The Minister, the Ministry, the Developer and the Ministry of Agro-Industry and Food Security filed their respective statements of defence resisting the appeal on the merits, and raising a preliminary objection that Eco-Sud did not satisfy the standing requirements in section 54(2) of the EPA 2002.

62. On 8 April 2019, Eco-Sud filed its statements of reply to each of the parties' statements of defence, which included all the facts that, according to it, established its standing.

6. The Tribunal's ruling and the Supreme Court's judgment

(a) The Tribunal's ruling

63. In order to determine whether Eco-Sud had standing the Tribunal held that under section 54(2)(b) Eco-Sud had to establish personal prejudice to it. In applying that construction the Tribunal relied on an earlier Tribunal ruling in *David Sauvage and others v Minister of Social Security, National Solidarity and Environment and Sustainable Development* (ELATU 1946/19) in which it was held that:

> "For there to be sufficient interest an appellant must be able to show that there is a nexus between the proposed development and him in that *he must be able to demonstrate the impact that the proposed development is likely to have upon him*, irrespective of whether or not it may affect other people but *he has to demonstrate that it will affect him.*" (Emphasis added).

64. The Tribunal applied that test in relation to section 54(2)(b) and having considered Eco-Sud's notice of Appeal and Statement of Case, but significantly not its statements of reply, held that "[n]owhere in these 'pleadings' does [Eco-Sud] disclose any averment that it is an 'aggrieved party', nor if or how it has suffered 'undue prejudice' [to it]". Accordingly, the Tribunal held that Eco-Sud had failed to establish its standing within of section 54(2)(a) and (b) of the EPA 2002 to lodge an appeal before the Tribunal. The Tribunal set aside Eco-Sud's appeal.

(b) The Supreme Court's judgment

65. On appeal the Supreme Court held that the Tribunal's interpretation of the "pleadings" was flawed. Eco-Sud's pleadings included its statements of reply filed pursuant to section 5(4)(ae) of the 2012 Act. The Tribunal incorrectly confined its consideration of Eco-Sud's "pleadings" to the notice of appeal and the statement of case. However, the pleadings also included Eco-Sud's replies to the statements of defence of the opposing parties and consideration of Eco-Sud's replies did disclose averments as to how it was an aggrieved party and how it suffered undue prejudice following the Minister's decision to issue an EIA licence. There has been no appeal against this part of the Supreme Court's decision.

66. The Supreme Court carried out a comprehensive review of English and Australian authorities in relation to standing. The Supreme Court considered that the Tribunal had adopted too restrictive an approach to the interpretation of section 54(2) and preferred to adopt a more liberal interpretation, relying on the approach adopted by the UK Supreme Court in *Walton v The Scottish Ministers* [2012] UKSC 44, [2013] PTSR 51. The Supreme Court of Mauritius held that:

> "The prerequisites for 'standing' under Section 54(2) of the EPA [2002] should, therefore, not be given a narrow interpretation that would render it ineffective. 'Standing' to bring an appeal under Section 54(2) of the EPA [2002] will exist where an appellant can show that … it has a sufficient interest in the act or decision that … it wishes to challenge ***or*** where … it can establish that … it is personally affected or substantially and unduly prejudiced in … its right or interest, …." (Emphasis added).

The Supreme Court then addressed the requirement that an appellant will have to show genuine concern and interest but rejected the contention relied on by the Tribunal that in order to establish that the decision is likely to cause him undue prejudice an appellant must establish personal prejudice. The Supreme Court stated:

> "This implies that an appellant organisation, in seeking to establish that it is an aggrieved party to whom undue prejudice is likely to be caused, will have to show genuine concern and interest in the environmental aspects that it seeks to protect and sufficient knowledge of the subject matter at hand so as to qualify it as genuinely acting in the general interest *albeit no individual property right or interest has been affected*" (Emphasis added).

Thereafter the Supreme Court set out other factors which may be considered in relation to standing. For ease of reference the Board has changed the format of those factors and added letters to each of them, as follows:

> "Other factors will then be relevant and considered in the light of the factual context of the application. Indeed, in such matters,
>
> (a) the appellant's expertise and knowledge of the subject matter;

(b) its track record of engagement on the subject matter;

(c) any previous involvement in the matter at hand;

(d) the merits of the claim; …

(e) the importance of the issue raised; and

(f) its consequences,

may be considered. It must be, however, understood that each case will depend on its own facts." (Emphasis added)

67. The Supreme Court quashed the ruling of the Tribunal. It remitted the matter back to the Tribunal to hear full argument on the issue of standing in the light of the Supreme Court's analysis of the requirements contained in section 54(2) of the EPA 2002.

7. Statutory interpretation

68. The normal principles of statutory interpretation are engaged.

69. The courts in conducting statutory interpretation are seeking to ascertain the meaning of the words used in a statute in the light of their context and the purpose of the statutory provision.

70. In *R (on the application of O) v Secretary of State for the Home Department* [2022] UKSC 3, [2023] AC 255, Lord Hodge, with whom those in the majority agreed, stated, at para 29:

"The courts in conducting statutory interpretation are 'seeking the meaning of the words which Parliament used': *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG* [1975] AC 591, 613 per Lord Reid. More recently, Lord Nicholls of Birkenhead stated: 'Statutory interpretation is an exercise which requires the court to identify the meaning borne by the words in question in the particular context.' (*R v Secretary of State for the*

> *Environment, Transport and the Regions, Ex p Spath Holme Ltd* [2001] 2 AC 349, 396 .) Words and passages in a statute derive their meaning from their context. A phrase or passage must be read in the context of the section as a whole and in the wider context of a relevant group of sections. Other provisions in a statute and the statute as a whole may provide the relevant context. They are the words which Parliament has chosen to enact as an expression of the purpose of the legislation and are therefore the primary source by which meaning is ascertained. There is an important constitutional reason for having regard primarily to the statutory context as Lord Nicholls explained in *Spath Holme*, p 397 : 'Citizens, with the assistance of their advisers, are intended to be able to understand parliamentary enactments, so that they can regulate their conduct accordingly. They should be able to rely upon what they read in an Act of Parliament.'"

71. As Lord Bingham of Cornhill explained in *R (Quintavalle) v Secretary of State for Health* [2003] UKHL 13, [2003] 2 AC 687*,* at para 8, legislation is usually enacted to make some change, or address some problem, and the court's task, within the permissible bounds of interpretation, is to give effect to that purpose. He also approved as authoritative that part of the dissenting speech of Lord Wilberforce in *Royal College of Nursing of the United Kingdom v Department of Health and Social Security* [1981] AC 800, 822, where Lord Wilberforce said:

> "In interpreting an Act of Parliament it is proper, and indeed necessary, to have regard to the state of affairs existing, and known by Parliament to be existing, at the time. It is a fair presumption that Parliament's policy or intention is directed to that state of affairs."

72. In *Barclays Mercantile Business Finance Ltd v Mawson* [2004] UKHL 51, [2005] 1 AC 684, at para 28 Lord Nicholls of Birkenhead also set out the requirement to have regard to the purpose of a particular provision, so far as possible. He said:

> "… the modern approach to statutory construction is to have regard to the purpose of a particular provision and interpret its language, so far as possible, in a way which best gives effect to that purpose."

73. In addition, courts should seek to avoid a construction that produces an absurd result, since this is unlikely to have been intended by the legislature. In that respect

absurdity is given a very wide meaning, covering, amongst other things, unworkability, impracticality, inconvenience, anomaly or illogicality: see *R v McCool* [2018] UKSC 23; [2018] NI 181, [2018] 1 WLR 2431, paras 23 and 24.

8. Cumulative requirements as to standing in section 54(2)

74. An analysis of the language used by the legislature shows that the standing requirements in section 54(2)(a) and (b) of the EPA 2002 are both separate and cumulative. An appellant must establish both that he is a person who (a) "is aggrieved by the decision" *and* (b) "is able to show that the decision is likely to cause him undue prejudice." In this case, the Supreme Court in setting out the prerequisites for standing under section 54(2) of the EPA 2002 used the word "or" rather than "and": see the quotation and the emphasised word at para 66 above. It is incorrect to state that standing to bring an appeal will exist where either an appellant "is aggrieved by the decision" *or* "is able to show that the decision is likely to cause him undue prejudice." Rather, the Board agrees with the judgment of the Supreme Court in *Sauvage v The Minister of Environment, Solid Waste Management and Climate Change* 2024 SCJ 6 that "both the prerequisites in section 54(2)(a) and (b) EPA [2002] need to be satisfied for a person to access the tribunal."

9. The true interpretation of the phrase "any person who is aggrieved by the decision"

75. In this case the Supreme Court concluded that "in interpreting the prerequisites of 'standing' under Section 54(2) of the EPA [2002], we ought to adopt the same reasoning of the court in [*Walton v The Scottish Ministers*]." In oral submissions on behalf of the Minister and the Ministry it was stated that there was no longer any challenge to the liberal test in *Walton v The Scottish Ministers* in relation to the phrase in section 54(2)(a) of the EPA 2002 "any person who is aggrieved by the decision." Rather, the appeal to the Board was confined to the submission that the requirements in section 54(2)(a) and (b) are separate and cumulative and that the requirement in section 54(2)(b) should not be read down so that it amounts to no more than that the person is aggrieved.

76. The meaning of "a person aggrieved" has been elucidated not only in *Walton v The Scottish Ministers*, but also in *AXA General Insurance Ltd v HM Advocate* [2011] UKSC 46, [2012] 1 AC 868, *Duff v Causeway Coast and Glens Borough Council* [2023] NICA 22 and *Mussington v Development Control Authority* [2024] UKPC 3, [2024] PTSR 460.

77. In *Walton v The Scottish Ministers* Mr Walton brought an action under the Roads (Scotland) Act 1984 challenging the validity of schemes and orders made by the

Scottish Ministers to allow the construction of a new road network around Aberdeen. To bring a challenge under that Act the applicant had to show that he was a "person aggrieved" by the decision: Roads (Scotland) Act 1984, paragraph 2 of Schedule 2. The Ministers did not challenge Mr Walton's entitlement to bring proceedings, but in obiter comments the Extra Division of the Inner House of the Court of Session, while refusing the appeal on substantive grounds, questioned whether he fulfilled the criteria of "person aggrieved". Mr Walton appealed to the Supreme Court. The Court dismissed the appeal, but Lord Reed noted that the Court could not avoid the need to consider the Extra Division's observations on the issue, as their obiter nature was unlikely to detract from their potential influence both in relation to statutory applications and in applications for judicial review: see para 82. He went on to consider the meaning of "person aggrieved" in the context of statutory appeals under the Town and Country Planning Acts and concluded that Mr Walton was undoubtedly a person aggrieved within the meaning of the legislation: see para 88.

78. In *Duff v Causeway Coast and Glens Borough Council* [2023] NICA 22 the Court of Appeal in Northern Ireland applied *Walton v The Scottish Ministers* to the question of whether or not an applicant for judicial review had standing to challenge the grant of planning permission. At para 21 Keegan LCJ distilled the following principles from *Walton v The Scottish Ministers*:

> "(i) A wide interpretation of whether an applicant is a 'person aggrieved' for the purpose of a challenge under the relevant Scottish statutory provision is appropriate, particularly in the context of statutory planning appeals (para 85).
>
> (ii) The meaning to be attributed to the phrase will vary according to the context in which it is found, and it is necessary to have regard to the particular legislation involved, and the nature of the grounds on which the applicant claims to be aggrieved (para 84).
>
> (iii) A review of the relevant authorities found that persons will ordinarily be regarded as aggrieved if they made objections or representations as part of the procedure which preceded the decision challenged, and their complaint is that the decision was not properly made (para 86).
>
> (iv) The authorities also demonstrate that there are circumstances in which a person who has not participated in the process may nonetheless be 'aggrieved': where for example an inadequate description of the development in the

application and advertisement could have misled him so that he did not object or take part in the inquiry (para 87).

(v) Whilst an interest in the matter for the purpose of standing in a common law challenge may be shown either by a personal interest or a legitimate or reasonable concern in the matter to which the application relates, what constitutes sufficient interest is also context specific, differing from case to case, depending upon the particular context, the grounds raised and consideration of, 'what will best serve the purposes of judicial review in that context.' (paras 92 and 93).

(vi) Para 94 also refers to the need for persons to demonstrate some particular interest to demonstrate that he is not a mere busybody. The court was clear that 'not every member of the public can complain of every potential breach of duty by a public body. But there may also be cases in which any individual, simply as a citizen, will have sufficient interest to bring a public authority's violation of the law to the attention of the court, without having to demonstrate any greater impact upon himself than upon other members of the public. The rule of law would not be maintained if, because everyone was equally affected by an unlawful act, no-one was able to bring proceedings to challenge it.'

(vii) The interest of the particular applicant is not merely a threshold issue, which ceases to be material once the requirement of standing has been satisfied: it may also bear upon the court's exercise of its discretion as to the remedy, if any, which it should grant in the event that the challenge is well-founded (paras 95 and 103).

(viii) Lord Hope added at para 52 that there are environmental issues that can properly be raised by an individual which do not personally affect an applicant's private interests as the environment is of legitimate concern to everyone and someone must speak up on behalf of the animals that may be affected.

(ix) Individuals who wish to do this on environmental grounds will have to demonstrate that they have a genuine interest in the aspects of the environment that they seek to protect, and

> that they have sufficient knowledge of the subject to qualify them to act in the public interest in what is, in essence, a representative capacity (para 53). It will be for the court to judge in each case whether these requirements are satisfied."

79. In *Mussington v Development Control Authority* Lord Boyd, giving the judgment of the Board, stated, at para 47, that Keegan LCJ's summary needs little addition. He added that "[i]t is however clear from Lord Reed's judgment [in *Walton v The Scottish Ministers*] that there is little, if any, difference between the concept of 'person aggrieved' in the Roads (Scotland) Act 1984 and standing for judicial review purposes." Accordingly, he said that "the attributes that are ascribed to the 'person aggrieved' in sub-paras (i), (ii), (iii) and (iv) of Keegan LCJ's summary apply with equal force to standing in judicial review." He also added that "the reference to 'speaking for animals' in sub-para (viii) applies to all aspects of flora and fauna as well as other environmental factors, such as perhaps geological or archaeological features."

80. The Board affirms that the Supreme Court was correct to rely on *Walton v The Scottish Ministers* in construing the phrase in the EPA 2002 "any person who … is aggrieved by the decision."

81. There is considerable overlap between the summary in *Duff v Causeway Coast and Glens Borough Council*, at para 21, as added to in *Mussington v Development Control Authority*, at para 47, ("the summary") on the one hand and the "[o]ther factors" identified by the Supreme Court as quoted at para 66 above ("the other factors").

82. Amongst, the other factors identified by the Supreme Court which *may* be considered are "(b) [the appellant's] track record of engagement on the subject matter" and "(c) any previous involvement in the matter at hand." The Board considers that (b) addresses the appellant's general engagement with the subject matter which in this appeal is the protection of wetlands at Pointe d'Esny, while (c) is concerned with physical involvement in the areas affected by the Project.

83. Factors (d) (e) and (f) are also amongst the other factors identified by the Supreme Court which *may* be considered. Those factors are: "(d) the merits of the claim; … (e) the importance of the issue raised and (f) its consequences …". The Tribunal has power under section 5(8) of the 2012 Act to dismiss an appeal where it appears to the Tribunal that it is trivial, frivolous, or vexatious, even where the proposed appellant clearly satisfies the requirement for standing: see para 56 above. To achieve coherence between the requirement in section 54(2)(a) of the EPA 2002 that the person "is aggrieved" and section 5(8) of the 2012 Act, the Board considers that in so far as the test in section 54(2)(a) involves an assessment of the merits of the claim including the importance of the issues raised or its consequences, the application of the requirement

should be informed by the low threshold set by section 5(8) namely whether the claim is trivial, frivolous, or vexatious. The standing requirement in section 54(2)(a) should not therefore be used to filter out arguable environmental issues. Furthermore, ordinarily a hearing on the question of standing should not descend into a protracted preliminary hearing in relation to any of the factors.

10. Application of the requirement that Eco-Sud must be a person aggrieved by the decision

84. The Supreme Court decided to remit the case back to the Tribunal for it to decide whether Eco-Sud had sufficient standing. Eco-Sud have not contended that if the Board dismisses the appeal that it should determine whether on the facts Eco-Sud was a person aggrieved by the decision to approve the issue of an EIA licence. Therefore, the Board will confine itself to setting out the points made before it as to why Eco-Sud is a person aggrieved by the decision of the Minister to approve the issue of an EIA licence.

(a) Eco-Sud made objections and representations as part of the procedure which preceded the decision, and its complaint is that the decision was not properly made: see subparagraph (iii) of Keegan LCJ's summary. Consequently, and ordinarily Eco-Sud will be regarded as a person aggrieved. The Board notes that the requirement that an appellant has submitted a statement of concern in response to a notice published under section 20 of the EPA 2002 has now been elevated to a further standing requirement: see para 59 above.

(b) Eco-Sud has a track record of general engagement on the subject matter of the preservation of wetlands around Pointe d'Esny: see the Supreme Court's factor (b).

(c) Eco-Sud has previously been involved in the matter at hand by its involvement in work in the areas affected by the Project: see the Supreme Court's factor (c).

(d) Eco-Sud has demonstrated genuine concern and interest in the environmental aspects that it seeks to protect and sufficient knowledge of the subject so as to qualify it as genuinely acting in the general interest: see para 10 above and subparagraph (ix) of Keegan LCJ's summary.

(e) In relation to the merits of the appeal the substantive objections raised by Eco-Sud are not trivial, frivolous, or vexatious: see the Supreme Court's factor (d). Rather the merits are backed by Eco-Sud's own considerable expertise and by the Expert's Report. Furthermore, the National Ramsar Committee's

clearance to the development was subject to a condition that the Environment and Sustainable Development Division of the Ministry be requested to undertake an Environmental Impact Assessment on the project. Accordingly, the National Ramsar Committee considered that Eco-Sud's objections had sufficient merit to require not only an EIA by the Developer as the proponent of the project but also an EIA by the Ministry. The Ministry has never carried out its own EIA: see para 28 above.

(f) The importance of the issue raised, and its consequences have been sufficiently demonstrated by Eco-Sud: see the Supreme Court's factors (e) and (f).

11. The true interpretation of the phrase "that the decision is likely to cause him undue prejudice"

85. The question which arises on this appeal is whether the undue prejudice which must be shown under section 54(2)(b) is confined to economic prejudice and prejudice to a private interest such as noise or disturbance to visual amenity. The Tribunal held and the Minister and the Ministry contend, that it is so confined. The Minister and the Ministry submit that a textual analysis of section 54(2)(b) requires an appellant to establish undue prejudice **to him** so that the words "to cause him" mean that the undue prejudice must be personal to the appellant and a consequence to the public at large is insufficient. However, the Supreme Court held that it was not necessary for Eco-Sud to establish that an "individual property right or interest" had been affected: see the passage quoted at paragraph 66 above.

86. Eco-Sud contends that applying a test of property rights or economic interests is not appropriate in an environmental context. To do so would lead to absurdity and would circumvent the purpose of the EPA 2002 which is to protect the environment. In support of these contentions Eco-Sud rely on para 152 of the judgment of Lord Hope of Craighead in *Walton v The Scottish Ministers*. Lord Hope, in holding that Mr Walton was a "person aggrieved" within the meaning of the 1984 Act, said that the judges of the Extra Division took "too narrow a view of the situations in which it is permissible for an individual to challenge a scheme or order on grounds relating to the protection of the environment." He said that:

> "An individual may be personally affected in his private interests by the environmental issues to which an application for planning permission may give rise … [b]ut some environmental issues that can properly be raised by an individual are not of that character."

He then gave the insightful example of an osprey whose route to and from a favourite fishing loch will be impeded by the proposed erection across it of a cluster of wind turbines. He posed the rhetorical question:

> "Does the fact that this proposal cannot reasonably be said to affect *any individual's property rights or interests* mean that it is not open to an individual to challenge the proposed development on this ground?" (Emphasis added)

He continued by observing:

> "That would seem to be contrary to the purpose of environmental law, which proceeds on the basis that the quality of the natural environment is of legitimate concern to everyone. The osprey has no means of taking that step on its own behalf, any more than any other wild creature. If its interests are to be protected someone has to be allowed to speak up on its behalf."

This it is submitted is a clear indication that an interpretation of section 54(2) of the EPA 2002 should be adopted that advances the overall purpose of the legislation to protect the environment rather than one that enables the purpose to be circumvented.

87. The Board considers that absurdity results if prejudice is confined to economic prejudice and prejudice to a private interest. The absurdity can be demonstrated by the example of a proposed development in the centre of a vast remote idyllic wilderness all of which is in the ownership of the developer. The more remote the area and the larger its size then the less likely it is that there will be a person with an economic or private interest which has been unduly prejudiced by the Minister's decision to approve the issue of an EIA Licence. The absurdity can also be demonstrated by the converse example of a proposed development in an area which has already been built-up. In a built-up area the environment may already have been adversely affected but it is more likely that a person's economic or private interest will be prejudiced. Accordingly, the outcome of these examples is that the safeguard of an appeal process would be denied in relation to the remote idyllic wilderness in which a pristine environment may well call out for protection whilst the safeguard of an appeal process would be available in a built-up area where the environment may already have been adversely affected.

88. The Board considers that the example of the remote idyllic wilderness does not just demonstrate the absurdity of confining prejudice to economic prejudice and prejudice to a private interest. It also demonstrates that the purpose of the EPA 2002 of protecting the environment would be circumvented. The legislative purpose in

introducing requirements as to standing is to be understood within the larger purpose of the EPA 2002 which is the protection of the environment. If prejudice were confined to economic prejudice or prejudice to a private interest, then in the example of a remote idyllic wilderness there would be no-one allowed to speak up on its behalf in an appeal to the Tribunal. Furthermore, the Tribunal would be powerless to protect the environment. The larger purpose of the EPA 2002 would be thwarted.

89. The Board agrees that a test of property rights or economic interests is not appropriate in an environmental context when considering standing under section 54(2)(b). The Board rejects the submission that prejudice in section 54(2)(b) of the EPA 2002 is confined to economic prejudice and prejudice to a private interest.

90. The question then arises as to what prejudice must be shown in an environmental context. The answer is that prejudice, in the sense of harm, can be to an *interest* in the environment as well as being prejudice to an economic interest or to a private interest. That answer is taken from subparagraph (ix) of Keegan LCJ's summary. Persons with a genuine *interest* in aspects of the environment that they seek to protect and who have sufficient knowledge of the subject will be able to show that a decision to approve the issue of an EIA licence is likely to cause them undue prejudice in relation to their *interest* in that aspect of the environment.

12. Application of the requirement of Eco-Sud showing that the decision is likely to cause it undue prejudice

91. As the Board has indicated the Supreme Court decided to remit the case back to the Tribunal for it to decide whether Eco-Sud had sufficient standing. Therefore, the Board will confine itself to setting out the points made before it as to how Eco-Sud is able to show that the decision of the Minister to approve the issue of an EIA licence is likely to cause it undue prejudice.

92. First, Eco-Sud is an association which advocates for and takes measures for the protection of the environment in Mauritius. It has expertise in relation to the protection of wetlands and in protecting the Ramsar Site. An association which exists to protect the environment has an interest in the preservation of the environment. The decision of the Minister to approve the issue of an EIA licence to the Developer puts at risk the environments in which Eco-Sud has a genuine interest thereby causing it undue prejudice.

93. Second, Eco-Sud not only relies on undue prejudice to its interest in the environment but also relies on undue prejudice to its private interests. Eco-Sud has invested time and effort in its work preserving the environment of the Ramsar Site and of the Pointe d'Esny lagoon: see para 11 above, so that its private interests in

maintaining that investment are likely to be unduly prejudiced by the decision of the Minister.

13. Conclusion

94. There has been no appeal from the Supreme Court's decision that the Tribunal misconstrued the meaning of pleadings so as to exclude Eco-Sud's statements in reply filed pursuant to paragraph 5(4)(ae) of the 2012 Act. The Tribunal incorrectly required Eco-Sud to prove prejudice to its private interests in order to establish standing under section 54(2)(b) of the EPA 2002. Accordingly, the Supreme court was correct to quash the Tribunal's order.

95. The Board dismisses the appeal.

96. Finally, the Board expresses its concern that the construction of the development has continued despite the potential for the Tribunal to decide that: (a) Eco-Sud has standing; and (b) the Minister's decision to approve the issue of an EIA licence should be set aside. The environment is of vital importance to every person in Mauritius. The obligation under section 2 of the EPA 2002, for every person in Mauritius to use their best endeavours to care responsibly for the natural environment, applies to all the parties to this appeal. The obligation to care responsibly includes an obligation to respect the procedural safeguards enacted by the legislature. The procedural safeguard of an appeal to the Tribunal is potentially undermined by the developer attempting to pre-empt the Tribunal's decision by proceeding with the development and amounts to a failure to care responsibly for the natural environment. Furthermore, it is essential that the public have confidence in the environmental safeguards enacted by the legislature and proceeding with the development in these circumstances undermines confidence. It should also not be forgotten that, if the appeal to the Tribunal succeeds and the issue of the EIA licence is quashed, the developer could be ordered to restore the land to its original condition. The fact that the developer has carried on with the development while these proceedings are pending would not be ground for resisting such an order.