

1978 December 19

[STAVRINIDES, L. LOIZOU AND MALACHTOS, JJ.]

GEORGHIOS CHR. KAFIEROS AND ANOTHER,

Appellants.

v.

ANDROULLA A. THEOCHAROUS AND OTHERS,

Respondents.

(*Civil Appeals Nos. 5559-60.*)

Immovable property—Access—Grant—Route of access—Determination—Discretion of Director of Lands and Surveys—Principles on which Director acts—Section 11A of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224 (as amended by section 3 of Law 10 of 1966)—And rule 6 of the Immovable Property (Granting of Access) Rules, 1967—Director is issuing a decision in the domain of private law—Appeal to District Court against decision of Director—Section 80 of Cap. 224 (supra)—Principles on which such Court acts in reviewing a decision of the Director—In setting aside Director's decision trial Judge did not make his findings, on the evidence adduced, as to where the Director went wrong—But made irrelevant findings which were not based on the evidence—Director's decision restored.

Practice—Piecemeal hearing of cases undesirable.

15 The appellants, as owners of plots of land at Ayios Dhometios which had no access to a public road, applied to the District Lands Office Nicosia under section 11(A)* of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, as amended by section 3 of Law 10/66, for a right of passage through adjoining plots.

20 The District Lands Office, after carrying out a local enquiry decided** to fix a right of passage through plots of land belonging to the respondents. The respondents appealed

* Quoted at pp. 623-24 *post*.

** See the reasoned decision of the Director of Lands and Surveys Department at pp. 627-635 *post*.

against this decision of the Director to the District Court of Nicosia under section 80* of Cap. 224.

The trial Judge heard only the appeal as against that part of the Director's decision determining the route of access and left the question of the compensation payable to be decided at a later stage, having accepted a relevant submission of counsel of the parties; and proceeded to set aside the decision of the Director mainly on the ground** that appellant 1 has been given excessive and preferential treatment by being allowed to have a passage on a main road through the plots of the respondents and that the owner of a poor stretch of land who wishes to take advantage of the law should not be given such advantages as to be detrimental to other land owners adjoining his property.

Upon appeal against this decision Counsel for the appellant mainly contended that the trial Judge nowhere in his judgment refers to any point of the decision of the Director where in his opinion the Director went wrong and he does not even make a finding that the decision of the Director was wrong. The trial Judge did not, therefore, decide the case as an appeal under section 80 of Cap. 224 but as a case in the first instance.

Held, (1) that the Immovable Property (Granting of Access) Rules, 1967, which were made by virtue of the new section 11(A)(7) of Cap. 224 place the machinery of granting access in the hands of the Director of Lands and Surveys for the accomplishment of this purpose; that under the said rules and in particular under rule 6, the Director after carrying out a local enquiry and after taking into consideration all relevant factors fixes the direction and extent of the route of access; that in case more than one property is considered suitable to serve the requirements of the dominant land, the Director is empowered to make a choice and decide on which property the right of passage will be created; and that in so doing he has to take into account the creation of the least possible damage, nuisance and inconvenience.

(2) That in determining a right of passage the Director is vested with discretionary powers in determining private rights and he is issuing a decision in the domain of private law; that,

* Quoted at p. 626 *post*.

** See the relevant passages of his judgment at pp. 639-641 *post*.

5 therefore, a District Court in reviewing the decision of the
Director should follow the principles on which the Supreme
Court in its administrative jurisdiction exercises judicial control
over administrative acts or decisions in the domain of public
10 law, with the only difference that the District Court in deciding
an appeal under section 80 of Cap. 224, has power to substitute
its own discretion for that of the Director whereas in a recourse
under Article 146 of the Constitution, the Administrative Court
cannot substitute its own discretion for that of the Administra-
15 tion; and that, however, the District Court will not lightly
substitute its own discretion for that of the Director unless
there are strong reasons proved by admissible evidence before
it *militating in that direction*.

15 (3) That a wide discretion is vested in the Director under
the law and the Regulations* made thereunder to determine,
in the first instance, as a person best qualified as an expert the
direction and extent of a right of passage and the Court in
the absence of concrete reasons cannot question his conclusions.

20 (4) That it was on the respondents in this appeal to persuade
the trial Court, by adducing oral and documentary evidence,
that the decision of the Director complained of was wrong;
and that such evidence is lacking and on the contrary the evidence
adduced proves that the said decision was a correct one.

25 (5) That the trial Judge instead of making his findings on
the evidence adduced as to where the Director went wrong,
findings which in the opinion of this Court no Court of law
could arrive at, on the facts and circumstances of this case,
proceeded in the wrong direction and made the findings which
have been referred to earlier in this judgment**, most of which
30 are irrelevant and not based on the evidence adduced; and that,
accordingly, the appeals will be allowed and the Director's
decision will be restored. (Principles laid down in *Georghiou*
v. HjiPhessa (1970) 1 C.L.R. 58 *applied*).

Appeals allowed.

35 *Observations:* Before we conclude our judgment, we must
reiterate what has been said time and again by this Court namely,

* Immovable Property (Granting of Access) Rules, 1967.

** See pp. 639-641 *post*.

that the hearing of cases piecemeal is entirely undesirable. The present case is a striking example why this Court has taken the above view. If the question of compensation had been determined by the trial Court together with the question of the validity of the Director's decision, this litigation which started more than six years ago, would today have come to an end. Now the case has to go back to the District Court to be tried on the question of compensation payable.

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Cases referred to:

Georghiou v. Hji Phessa (1970) 1 C.L.R. 58.

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Appeals.

Appeals against the judgment of the District Court of Nicosia (Papadopoulos, S.D.J.) dated the 3rd March, 1976, (Applications Nos. 30/72 and 35/72) whereby, on appeal under section 80 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, the decision of the Director of Lands and Surveys, granting to the appellants a right of way, was set aside.

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L. Clerides, for the appellants.

A. Emilianides with *Ph. Clerides*, for the respondents.

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Cur. adv. vult.

STAVRINIDES J.: The judgment of the Court will be delivered by Mr. Justice Malachtos.

MALACHTOS J.: In these two appeals, which were heard together, the appellants, who were the respective respondents in Applications Nos. 30/1972 and 35/1972 of the District Court of Nicosia, which were filed by way of appeal under section 80 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, complain against the judgment of the trial Judge setting aside the decision of the Director of Lands and Surveys, by which a right of way was granted to them. The relevant facts, to which we shall refer in detail in view of the nature of the case, are the following:

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The first appellant, Georghios Chr. Kafieros, of Nicosia, is the owner of a piece of land situated at Ayios Dhometios village, in the Nicosia District, under plot 129 of Block B. In view of the fact that this plot has no access to a public road, this appel-

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lant applied to the D.L.O. under section 11(A) of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, as amended by section 3 of Law 10/66, for a right of passage through plot 132, which is situated to the north eastern side of plot 129, and which on its eastern side abuts on Stelios Mavrommatis Street and is registered in the name of Myrianthi Stavri of Ayios Dhometios, respondent No. 2 in these appeals.

This section reads as follows:

“ 11A.—(1) Notwithstanding the provisions of this Law, if any immovable property is, for any reason, in such a way enclaved as to be lacking the necessary access to a public road, or if the existing access is inadequate for its proper use, development or utilization, the owner of such immovable property shall be entitled to claim an access over the adjacent immovable properties on payment of a reasonable compensation.

For the purposes of this sub-section ‘access’ includes the right of conducting water through channels or pipes or any other suitable means.

(2) The route of the access and the extent of the right to the use thereof, as well as the compensation payable shall be determined by the Director after previous notice to all interested parties.

(3) There shall be no obligation of the neighbours to provide an access if the communication of the immovable property to the public road has ceased through a voluntary act or omission of the owner thereof.

(4) If, as a result of the alienation of a part of the immovable property, the communication of the part alienated or of the remainder to the public road has been cut off, the owner of the part through which the communication had heretofore been made shall be obliged to provide an access. The alienation of one or more immovable properties belonging to the same owner shall be assimilated to the alienation of a part.

(5) If, as a result of the opening of a new access or for any other reason, the need for the access established

has ceased, the owner of the immovable property over which it is exercised shall be entitled to claim that it be abolished on his returning the compensation paid.

(6) An access granted under this section shall be deemed to be a right, easement or advantage acquired under the provisions of section 11 of this Law, and the provisions of this Law shall apply to any such access. 5

(7) The Council of Ministers may make regulations regulating any matter requiring to be regulated for the better application of this section and, in particular, the procedure to be followed for the purposes thereof: 10

Provided that regulations made under this sub-section shall be laid before the House of Representatives which shall within fifteen days of such laying decide thereon. In the event of approval or amendment of the regulations so laid, they shall come into operation as approved by the House of Representatives. 15

(8) The provisions of this section shall not apply to state land of any nature, without a specific decision of the Council of Ministers in this respect and on such terms and conditions as may be provided in the decision." 20

As it appears from the relevant D.L.O. file, *exhibit 3*, at the local enquiry which was carried out on 23/7/68, it was found out that other immovable properties were also suitable for a passage and so by virtue of regulation 6(2) of the Immovable Property (Grant of Access) Rules, 1967, the appellant was required by letter of the same day, under regulation 3, to serve a notice and plan on the owner of plot 458 of Block A, which is situated to the western side of plot 129 and abuts on the blind alley, namely, Marathonos Street. Upon receiving the above letter this appellant wrote a letter to the Director, dated 23/8/68, whereby, among other things, he explained his difficulties and the efforts he made since 1961 to obtain a passage for his enclaved piece of land. In the said letter he referred to the fact that plot 130 (now plot 1926), which is situated to the south eastern side of his property and belongs to Anastasis Ttoouli Krashias was also an enclaved piece of land and the owner was bound to apply for the same right of passage through plot 132. He also referred to Action No. 695/61 of the District 25 30 35

Court of Nicosia between Antigoni Savva Kontopoullou of Ayios Dhometios, the then owner of plot 131, (now plot 1927) and himself, in which a judgment by consent was issued on the 23rd November, 1962, by which he was granted a right of
5 passage of 3 ft. in width along the northern boundary line of plots 130 and 131. This plot 131 is situated to the eastern side of plot 130 and to the southern side of plot 132 and its eastern boundary line abuts on Stelios Mavrommatis Street. He was, however, unable to obtain a copy of judgment due to
10 the existing political situation at that time. He was also informing the Director that a copy of judgment was filed in a previous D.L.O. application made by him on the same subject matter under No. 1926/60.

By letter dated 26/8/68 this appellant was informed by the
15 D.L.O. that unless he complied with the previous letter of the 23rd July, 1968, his application was to be considered as abandoned. No further steps were taken to the direction indicated by the D.L.O. and so the application was considered as abandoned and the relevant fees were refunded to the appellant on
20 6/10/69. By a new application No. 524/1970, this appellant applied to the D.L.O. for a right of passage through plots 132, 130 and 131 of Block B. Before his application was considered, a second application was filed under No. 5809/1971 by Iacovos Ghoghakis, the appellant in Appeal No. 5560, representing the
25 Registrar of the District Court of Nicosia, as administrator of the Estate of the deceased Anastasis Ttoouli Krashias, owner of plot 130, for a right of passage through plots 132 and 131. Plots 130 and 131 by application No. 1248/1966, were renumbered as plots 1926 and 1927 respectively. After the filing of
30 application No. 5809/1971, the D.L.O. fixed it to be considered together with application 524/1970, on 21st January, 1972, at 9 a.m. The D.L.O. clerk, Christodoulos Markides, who was nominated by the D.L.O. to consider these applications, called a valuer of the D.L.O., namely, Stelios Vassiliou, to assist him
35 for the evaluation of the proposed right of passage. The valuer was asked to make an assessment of a passage of 5 ft. wide along the southern side of plot 132 and also 2 ft. wide along the northern side of plots 130 and 131, now plots 1926 and 1927 respectively. The reason for asking for only 2 ft. from plot
40 1927 was because by virtue of the consent judgment of the District Court of Nicosia in Action No. 695/61, plot 129 enjoyed

a right of passage of 3 ft wide through plot 1927. In the meantime, the owner of plot 1926 volunteered to concede another 2 ft. from his property in favour of the owner of plot 129. In view of the above the D.L.O. clerk decided to fix a right of passage in favour of plot 129 as well as in favour of plot 1926 as follows: 5

5 ft. from the southern boundary line of plot 132 and 2 ft. from the northern boundary line of plot 1927. Before this decision was reached the relevant letter to the District Officer of Nicosia was sent on 6/4/72, who agreed to this course by a letter dated 1/7/72. 10

As against the above decision of the D.L.O. Androulla Andreou Theocharous, and her mother Antigoni Savva Kontopoullou, owners at the time of plot 131 (now plot 1927) filed by way of appeal application No. 30/72 in the District Court of Nicosia against George Kafieros and Iacovos Ghoghakis on 27/7/72 under section 80 of Cap. 224. A similar application No. 35/72 was filed by Andreas Christofides of Ayios Dhometios as representative of Myrianthi Stavri, owner of plot 132, against the same respondents on 12/8/72. 15 20

Section 80 of Cap. 224 reads as follows:

“ Any person aggrieved by any order, notice or decision of the Director made, given or taken under the provisions of this Law may, within thirty days from the date of the communication to him of such order, notice or decision, appeal to the Court and the Court may make such order thereon as may be just but, save by way of appeal as provided in this section, no Court shall entertain any action or proceeding on any matter in respect of which the Director is empowered to act under the provisions of this Law. 25 30

Provided that the Court may, if satisfied that owing to the absence from the Colony, sickness or other reasonable cause the person aggrieved was prevented from appealing within the period of thirty days, extend the time within which an appeal may be made under such terms and conditions as it may think fit.” 35

The District Lands Officer on being served with an office copy of the applications as provided in rule 5(3) of the Immo-

vable Property (Tenure, Registration and Valuation) Rules, 1956 forwarded to the Court a statement of his reasons dated 16.8.72 for the decision appealed against as provided by rule 6(2) and (3) of the said Rules.

- 5 This reasoned decision of the Director which was eventually made *exhibit No. 1* is as follows:—

10 “ Οί Γεώργιος Χρ. Καφιέρου, ὁδὸς Διονυσίου 15, Λευκωσία καὶ Ἰάκωβος Γωγάκη ὡς ἀντιπρόσωπος τοῦ Πρωτοκολλητοῦ τοῦ Ἐπαρχιακοῦ Δικαστηρίου Λευκωσίας ὡς διαχειριστοῦ τῆς περιουσίας τοῦ ἀποβιώσαντος Ἀναστάση Ττουολῆ Κρασιᾶ, Ἡρακλέους 22, Στρόβολος. Οἱ καθ’ ὧν ἡ αἴτησις εἰς τὴν παρούσαν ἔφεισιν εἶναι οἱ ἐγγεγραμμένοι ἰδιοκτητῆται τῶν ἀκινήτων ὑπὸ τεμάχια 129 καὶ 1926 τοῦ Συμπλέγματος Β, τοῦ Φύλλου/Σχεδίου ΧΧΙ/45, Ε., ἢ τοῦ χωρίου Ἅγιος Δομέτιος ὡς ἀκολούθως:—

(α) Γεώργιος Χρ. Καφιέρου:—

Ἰδιοκτῆτης τοῦ τεμ. 129, τοῦ Συμπλέγμ. Β, τοῦ Φ/Σχεδ. ΧΧΙ/45, Ε.2, τοῦ χωρίου Ἅγιος Δομέτιος δυνάμει ἐγγραφῆς Β 136/14.9.60, τὸ ὅλον μερίδιον.

20 (β) Ἰάκωβος Γωγάκης ὡς ἀντιπρόσωπος τοῦ Πρωτοκολλητοῦ τοῦ Ἐπαρχιακοῦ Δικαστηρίου Λευκωσίας ὡς διαχειριστοῦ τῆς περιουσίας τοῦ ἀποβιώσαντος Ἀναστάση Ττουολῆ Κρασιᾶ:—

25 Ἰδιοκτῆτης τοῦ τεμ. 1926 τοῦ Συμπλέγματος Β τοῦ Φ/Σχεδίου ΧΧΙ/45 Ε.11, τοῦ Χωρίου Ἅγιος Δομέτιος δυνάμει ἐγγραφῆς Β2145/9.10.71, τὸ ὅλον μερίδιον.

30 2. Οἱ καθ’ ὧν ἡ αἴτησις, ὡς ἰδιοκτῆται περικλείστων, ἤτοι ἔστερημένων, οἰασδήποτε διόδου πρὸς τὸν δημόσιον δρόμον ἀπετάθησαν συμφώνως αἰτήσεως των ἡμερομηνίας 3.2.1970 καὶ 17.11.71 ἀντιστοίχως πρὸς τὸ Ἐπαρχιακὸν Κτηματολογικὸν Γραφεῖον Λευκωσίας δυνάμει τοῦ ἄρθρου 11Α τοῦ περὶ Ἀκινήτου Ἰδιοκτησίας (Διακατοχή, ἐγγραφή καὶ ἐκτίμησις) Νόμου Κεφ. 224, καὶ Νόμος 3/60, 78/65 καὶ 10/66, διὰ τὴν

35 ἀπόκτησιν διόδου ὃ μὲν πρῶτος διὰ τῶν ἀκινήτων,

(1) τεμάχιον 132, τοῦ συμπλέγματος Β, τοῦ Φ/Σχεδ. ΧΧΙ/45, Ε.2, ἐπ’ ὀνόματι τῆς Μυριάνθης Σταυρῆ δυνάμει ἐγγραφῆς Β 139/2.7.49, τὸ ὅλον μερίδιον.

- (ii) τεμάχιον 1927 τοῦ συμπλέγματος Β, τοῦ Φ/Σχεδίου ΧΧΙ/45, Ε.2 ἐπ' ὀνόματι τῶν:—
 Ἄνδρουλλας Ἀνδρέου Α. Θεοχάρους καὶ Ἀντιγόνης Σάββα Κοντοπούλλου ἀνά ἓν μερίδιον, ἐκάστη, δυνάμει ἐγγραφῆς Β2146/19.10.71 5
- (iii) τεμάχιον 1926 τοῦ Συμπλέγματος Β, τοῦ Φ/Σχεδ. ΧΧΙ/45, Ε.2, ἐπ' ὀνόματι τῶν Ἰακώβου Γωγάκη ὡς ἀντιπροσώπου τοῦ Πρωτοκολλητοῦ τοῦ Ἐπαρχιακοῦ Δικαστηρίου Λευκωσίας, ὡς διαχειριστοῦ τῆς περιουσίας τοῦ ἀποβιώσαντος Ἀναστάση Ττουολῆ Κρασιᾶ δυνάμει ἐγγραφῆς Β2145/19.10.71 ὁ δὲ δεῦτερος διὰ τῶν ἀκινήτων, 10
- (i) τεμάχιον 132 τοῦ Φ/Σχεδ. ΧΧΙ/45, Ε.2 τοῦ Συμπλέγματος Β, ἐπ' ὀνόματι τῆς Μυριάθης Σταυρῆ, τὸ ὅλον μερίδιον δυνάμει ἐγγραφῆς Β 139/2.7.49 καὶ 15
- (ii) τεμάχιον 1927 τοῦ Συμπλέγματος Β, τοῦ Φ/Σχεδ. ΧΧΙ/45, Ε.2 ἐπ' ὀνόματι τῆς Ἀνδρουλλας Ἀνδρέου Α. Θεοχάρους καὶ Ἀντιγόνης Σάββα Κοντοπούλλου ἀνά ἓν δεῦτερον μερίδιον ἐκάστη, δυνάμει ἐγγραφῆς Β 2146/19.10.71. 20

3. Τὸ Ἐπαρχιακὸν Κτηματολόγιον, ἀφοῦ ἐμελέτησεν τὰς ὑποβληθείσας αἰτήσεις καὶ ἀφοῦ ἰκανοποιήθη ὅτι οἱ καθ' ὧν ἡ αἴτησις ἠκολούθησαν τὴν ὑπὸ τοῦ Νόμου προνοουμένην διαδικασίαν προέβη εἰς τὴν ἐπιθεώρησιν ἐπηρεαζομένων ἀκινήτων τὴν 21.1.1972 ὑπὸ τοῦ Χρ. Μαρκίδη, Κτηματολόγου Ἰης Τάξεως συνοδευομένου ὑπὸ τοῦ Στέλιου Βασιλείου Κτηματολόγου 2ας τάξεως εἰδικοῦ ἐπὶ τῶν ἐκτιμήσεων, ἀφοῦ προηγουμένως ἐπέδωσε εἰδοποίησιν πρὸς ὅλα τὰ ἐνδιαφερόμενα πρόσωπα δυνάμει τοῦ κανονισμοῦ 5. 30

4. Ὁ κτηματολόγος ἀφοῦ ἐμελέτησε πάντα τὰ σχετικὰ στοιχεῖα καὶ γεγονότα καθώρισε τὴν κατεύθυνσιν τῆς διόδου τὴν ἔκτασιν τοῦ πρὸς χρῆσιν αὐτῶν δικαιώματος τῶν ἀποκτώντων μερῶν καὶ τὴν ὑπ' αὐτῶν καταβλητέαν ἀποζημίωσιν. Ὁ Κτηματολόγος κατὰ τὴν μελέτην τῶν σχετικῶν στοιχείων καὶ γεγονότων καὶ ἐπὶ τῷ σκοπῷ ὅπως προκληθῆ ἡ μικρότερα δυνατὴ ζημία, ὀχληρία ἢ ταλαιπωρία κατέληξεν εἰς τὸ συμπέρασμα ὅτι, μὴ ὑπαρχόντων ἄλλου ἢ ἄλλων ἀκινήτων διὰ τὴν δημιουργίαν διόδου ἐπ' αὐτῶν ἡ ἐπιλεγείσα διόδος ἦτο ἡ μόνη κατάλληλος. 40

5. Περιγραφή Διόδου και έπηραζομένων Άκινήτων:—

Τεμάχιον 132 (μέρος)

5 Αύτη είναι μία στενή λωρίς γής πλάτους πέντε και μήκους
έκατόν ποδών ήτοι έκτάσεως 0—0—500 τ.π. και άποτελεί
μέρος τής Νοτίας πλευράς ενός οικοπέδου έκτάσεως 0—2—0.

Τεμάχιον 1926 (μέρος)

10 Αύτη είναι μία στενή λωρίς γής πλάτους δύο και μήκους
σαράντα ποδών ήτοι έκτάσεως 0—0—80 τ.π. και άποτελεί
μέρος τής βορείας πλευράς χωραφιού άνευ δρόμου (τόπου)
έκτάσεως 0—0—3400 τ.π.

Τεμάχιον 1927 (μέρος)

15 Αύτη είναι μία στενή λωρίς γής πλάτους πέντε και μήκους
έξήντα ποδών, ήτοι έκτάσεως 0—0—300 τ.π. και άποτελεί
μέρος τής βορείας πλευράς τής αύλης διπλοκατοικίας τó
οικόπεδον τής όποίας έχει έκτασιν 0—1—1200 τ.π.

6. Άλλα λεπτομέρεια

- (i) Θέσις κτημάτων. Εύρίσκονται περίπου 300 πόδια
βορείως τής έκκλησίας Άγ. Γεωργίου εις Άγιον
Δομέτιον.
- 20 (ii) Ό ιδιοκτήτης του κτήματος υπό τεμ. 129 συμφώνως
του τίτλου Β 136 Άγιος Δομέτιος έχει δικαίωμα
διαβάσεως πλάτους τριών ποδών κατά μήκος τής
βορείας πλευράς του τεμ. 1926.
- 25 (iii) Προοπτικά αξιοποιήσεως. Τα έπηραζόμενα έκ
τής διόδου κτήματα είναι κατάλληλα διά κατοικίας
τής μεσαιάς τάξεως και άνω, διότι ή περιοχή αύτη
θεωρείται από τας καλύτερας τής πρωτευούσης.
Έπίσης εις τήν περιοχήν δέν παρατηρείται αξιο-
ποίησις κτημάτων πέραν των δύο όρφων.
- 30 (iv) Έπιβλαβής επίδρασις. Έπειδή τó μέρος τó όποιον
θά χρησιμοποιείται ως διόδος δέν θά αφαιρεθῆ από
τους τίτλους ιδιοκτησίας αλλά θά εξακολουθῆ νά
εύρίσκεται υπό τήν κυριότητα των ιδιοκτητών του,
και έπειδή θά καταβληθῆ εις τους άνω ιδιοκτήτας
35 άποζημίωσις “full value” δέν ύπολογίζω έπιβλαβῆ
έπίδρασιν επί του ύπολοίπου μέρους των έκτιμημέ-
νων κτημάτων.

7. Μέθοδος Έκτιμήσεως. Έχρησιμοποιήθη ή δι' άπευθείας συγκρίσεως μέθοδος έκτιμήσεως.

8. Συγκριτικά πωλήσεις.

(i) Πώλησις οικόπεδου έκτάσεως 0-1-2100 υπό τεμάχιον 1428, Συμπλ. Β, Άγιος Δομέτιος έπωλήθη την 27.11.71 άντι £5300.- ήτοι πρòς 930 μιλς τò τ.π. 5

(ii) πώλησις οικόπεδου έκτάσεως 0-1-2400 υπό τεμ. 380 συμπλ. Β, Άγ. Δομέτιος, έπωλήθη την 5.5.71 άντι £5,000.- ήτοι πρòς 833 μιλς τò τ.π. δυνάμει Π631/71 Π.Λ. 10

(iii) πώλησις οικόπεδου έκτάσεως 0-1-2100 υπό τεμ. 1865, συμπλ. Β Άγ. Δομέτιος έπωλήθη την 7.12.70 δυνάμει Π.274/71 Π.Λ. £4,000.- πρòς 702 μιλς τò τ.π.

9. Έκτίμησις. 15

Έχοντας ύπ' όψιν τας πωλήσεις (1-3) και ίδίως την πώλησιν (1) την θέσιν και σχήμα τών έπηρεαζομένων, έκ τής διόδου κτημάτων, ύπολογίζω ότι ή άξία του έκτιμημένου μέρους είναι περίε τὰ 1000 μιλς τò τ.π. πρώτη ζώνη.

Ούτω:- 20

(i) Τεμάχιον 132

Έπηρεαζομένη έκτασις 0-0-500 τ.π.

Ζώνη Α. 300 τ.π. πρòς 1000 μιλς

τò τ.π.

£300

Ζώνη Β. 200 τ.π. πρòς 500 μιλς

τò τ.π.

£100

25

Όλικόν £400

(ii) Τεμάχιον 1927

Έπηρεαζομένη έκτασις 0-0-300 τ.π.

πρòς 1000 μιλς τò τ.π.

£300

30

Έξοδα τοποθετήσεως περιφράγματος

20 μετρ. πρòς £2.- τò μέτρ.

£ 40

Όλικόν £340

(iii) Τεμάχιον 1926

Ἐπηρεαζομένη ἕκτασις 0-0-80 τ.π.

πρὸς 320 μίλις τὸ τ.π.

£ 25.600

Λέγε ὀλικὸν £ 25

5 10. Τὸ πόρισμα τῆς διεξαχθείσης ἐρεύνης ἐγνωστοποιήθη πρὸς τὰ ἐνδιαφερόμενα μέρη διὰ τοῦ τύπου Ν286 ἡμερομηνίας 17.7.1972 μετὰ σχετικοῦ σχεδιαγράμματος.

10 (ii) Ἐν ὄψει τῶν ὄσων ἐξετέθησαν ἀνωτέρω εἶμαι τῆς γνώμης ὅτι ὁ γενόμενος καθορισμὸς τῆς διευθύνσεως τῆς διόδου καὶ ἡ ἀποφασισθεῖσα καταβλητέα ἀποζημίωσις δὲν παραβλάπτουν καθ' οἷονδῆποτε τρόπον τὰ συμφέροντα τῶν αἰτητριῶν."

15 ("Georghios Chr. Kafieros, Dionysiou Str. No. 15, Nicosia and Iacovos Gogakis representing the Registrar District Court Nicosia, as administrator of the estate of the deceased Anastasis Ttoouli Krasias, Eracleous Str. No. 22 Strovolos. The respondents in this appeal are the registered owners of plots 129 and 1926 of Block B, Sheet/plan XXI/45, E.II of Ayios Dhometios village as follows:

20 (a) Georghios Chr. Kafieros:

Owner of plot 129, Block B, Sheet/Plan XXI/45. E.2 of Ayios Dhometios village by virtue of registration B 136/14.9.60, the whole share.

25 (b) Iacovos Gogakis representing the Registrar District Court Nicosia as administrator of the estate of the deceased Anastasis Ttoouli Krasias:-

Owner of plot 1926, Block, B, Sheet/Plan XXI/45 E.II of Ayios Dhometios village by virtue of registration B. 145/9.10.71, the whole share.

30 2. The respondents as owners of enclaved lands, that is which lack any access to the public road, applied, by means of applications dated 3.2.1970 and 17.11.1971, respectively, to the District Lands Office Nicosia by virtue of section 11A of the Immovable Property (Tenure Registration and
35 Valuation) Law, Cap. 224, and Laws 3/60, 78/65 and 10/66, for the grant of access, the first one through

- (i) plot 132, of Block B, Sheet/Plan, XXI/45. E.2, in the name of Myrianthi Stavri by virtue of registration B. 139/2.7.49, the whole share.
- (ii) plot 1927, of Block B, Sheet/Plan XXI/45. E.2 in the name of:
Androulla Andreou A. Theocharous and Antigoni Savva Kontopoullou a share each, by virtue of registration B. 2146/19.10.71 and
- (iii) plot 1926, of Block B, Sheet/Plan XXI/45. E.2, in the name of Iacovos Gogakis, representing the Registrar District Court Nicosia, as administrator of the estate of the deceased Anastasis Ttoouli Krasias, by virtue of registration B. 2145/19.10.71 and the second respondent through
 - (i) plot 132, sheet/Plan XXI/45. E.2, of Block B, in the name of Myrianthi Stavri, by virtue of registration B. 139/2.7.49, the whole share, and
 - (ii) plot 1927, of Block B, Sheet/Plan XXI/45. E.2 in the name of Androulla Andreou A. Theocharous and Antigoni Savva Kontopoullou, by virtue of registration B. 2146/19.10.71, one half share each.

3. The District Lands Office, having studied the applications and upon being satisfied that the respondents have followed the procedure provided by Law, had the lands affected to be inspected on the 21.1.1972 by Chr. Markides, Lands Officer 1st Grade, who was accompanied by Stelios Vassiliou, Lands Officer 2nd Grade, a valuation expert, after serving a notice on all interested persons under rule 5.

4. The Lands Officer having considered all relevant elements and facts determined the route, the extent of the right of passage to be used by the acquiring parties and the compensation payable by them. The Land Officer in the the course of considering the relevant elements and facts and for the purpose of causing the least possible damage, nuisance or inconvenience came to the conclusion that in

the absence of another or other plots for the creation of a route of access on them the selected route was the only suitable one.

5. *Description of route and properties affected:*

5 *Plot 132 (part)*

This is a narrow strip of land 5 feet wide and 100 feet long that is of an extent of 0-0-500 square feet which forms part of the southern side of a building site of 0-2-0 in extent.

Plot 1926 (part)

10 This is a narrow strip of land 2 feet wide and forty feet long that is of an extent of 0-0-80 square feet which forms part of the northern side of a field without a road (location) of an extent of 0-0-3400 square feet.

Plot 1927 (part)

15 This is a narrow strip of land 5 feet wide and sixty feet long, that is of an extent of 0-0-300 square feet which forms part of the northern side of the yard of a two-flat house the site of which has an area of 0-1-1200 square feet.

20 6. *Other details*

(i) *Location of Lands.* They are situated at about 300 feet to the North of Ayios Georghios Church at Ayios Dhometios.

25 (ii) The owner of plot 129 has, in accordance with title deed B. 136, Ayios Dhometios, a right of way, 3 feet wide, along the northern side of plot 1926.

30 (iii) *Prospects of development.* The lands affected by the route are suitable for dwelling houses for the middle class and upwards, because the area is considered as one of the best of Nicosia. Also in the area there does not exist development of Lands beyond two storeys.

35 (iv) *Injurious affection.* As the part which will be used as route will not be deducted from the title deeds but it will continue to be under the owner-

ship of its owners and because a full value compensation will be paid to the owners no injurious affection is estimated in the remaining part of the lands under assessment.

7. *Method of Assessment* 5

The direct comparison method was used.

8. *Comparable Sales*

(i) Sale of building side of 0-1-2100 in extent, plot 1428, Block B, Ayios Dhometios; it was sold on 27.11.71 at £5300 that is at 930 mils per square foot. 10

(ii) Sale of building site of 0-1-2400 in extent plot 380, Block B, Ayios Dhometios; it was sold on 5.5.71 at £5,000 that is at 833 mils per square foot by virtue of S631/71. 15

(iii) Sale of building site of 0-1-2100 in extent, plot 1865, Block B, Ayios Dhometios; it was sold on 7.12.70 by virtue of S. 274/71 at £4,000 at 702 mils per square foot.

9. *Assessment.* 20

Bearing in mind sales (1-3) and particularly sale (I) the location and shape of the lands affected by the route, I assess the value of the part affected at about 1000 mils per square foot, first zone.

Therefore: 25

(i) <i>Plot 132</i>			
Area affected 0-0-500 square feet			
Zone A. 300 square feet at 100 mils per square foot		£300	
Zone B. 200 square feet at 500 mils per square foot		£100	30

	Total	£400	
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(ii) <i>Plot 1927</i>			
Area affected 0-0-300 square feet at 1000 mils per square foot		£300	35

	Costs of placing fence 20 metres at £2 per metre	£ 40
	Total	£340
	(iii) <i>Plot 1926</i>	
5	Area affected 0-0-80 square feet at 320 mils per square foot	£ 25.600
	Say total	£ 25.

10 10. The finding of the inquiry which has been carried out was communicated to the interested persons by means of Form No. 285 dated 17.7.1972 together with a relevant plan.

15 (ii) In view of what has been stated above I am of the opinion that the route which has been determined and the compensation which has been assessed do not in any way affect the interests of the applicants.”)

20 As it appears from the record of proceedings, the two applications came together before the trial Court for hearing on 28/4/75, when by consent of all concerned they were adjourned to the 7th June, 1975. On that day the hearing of both applications had to be adjourned again as Myrianthi Stavri, the applicant in Application No. 35/1972, died the day before and legal steps had to be taken for the change of the parties. Again both applications came before the trial Court for hearing on 25 30/10/75, when counsel appearing for the parties made the following joint statement:

30 “ From the reasoned decision of the D.L.O. as well as the plan for the proposed passage in favour of the respondents it appears that the position as appearing on the plan is different to the existing situation in that in plot 1927 of Block ‘B’ certain buildings have been erected in the meantime after the necessary permit of the authorities. These facts necessitate a re-examination and review by the D.L.O. and the parties to this appeal agree that the D.L.O. officers who prepared the original reasoned decision should prepare a new report which they will file in Court on or before 35 the 19.12.75 and deliver to the advocates and the parties

copies thereof. It is clearly understood that they reserve their respective rights and they are not bound by the new report of the D.L.O..”

The applications then were fixed for mention on 19/12/75 and in the meantime the new “report” dated 26th November, 1975, with the relevant copies of the D.L.O. plan indicating the proposed new route was filed in Court on 28/11/75. This report which was made *exhibit* 2 is as follows:—

“ Αναφέρομαι ἐπὶ τῆς ὡς ἄνω αἰτήσεως τοῦ Δικαστηρίου ἣτις ἀφορᾷ τὸ ἐν ἐπικεφαλίδι θέμα, καθὼς ἐπίσης καὶ τοῦ θέματος τῆς ἀποδοχῆς ὑπὸ τοῦ δικαστηρίου τῆς ὁμοφώνου εἰσηγήσεως τῶν δικηγόρων τῶν διαδίκων ὅπως διεῖξαθῆ νέα ἔρευνα ἐπὶ τοῦ σκοποῦ ἔξευρέσεως νέας πιθανῆς διόδου, ἱκανοποιούσης τοὺς σκοποὺς καὶ ἀνάγκας τῆς ὑπὸ ἀναφορὰν αἰτήσεως καὶ ἐπιθυμῶ νὰ πληροφορήσω ὑμᾶς τὰ κάτωθι:—

Ἐπὶ τὸ φῶς τῆς νέας ἐρεύνης καὶ ἐν ὄψει τῶν ὄσων ἐξετέθησαν ἐπὶ δικαστηρίῳ κατὰ τὴν ἀκρόασιν τῆς ἄνω αἰτήσεως, τὴν 30ην Ὀκτωβρίου, 1975, ὅτι δηλαδὴ ἐπὶ τοῦ τεμ. 1927 τοῦ συμπλέγματος ‘B’, ἀνηγέρθησαν νέαι οἰκοδομαὶ Πρᾶγμα πού διεπιστώθη καὶ ἐπὶ τόπου’ κατόπιν σχετικῆς ἀδείας, ἐκδοθείσης ὑπὸ τῆς ἀρμοδίας Ἀρχῆς καὶ κατόπιν τῆς ὑπὸ τοῦ Κτηματολογίου ἐκδοθείσης ἀποφάσεως εἰσηγοῦμαι ὅπως:—

- (I) Ἐποδειχθῆ πρὸς τοὺς αἰτητὰς ὅτι ἐπὶ τοῦ παρόντος καὶ ἐπὶ τῶ σκοπῶ ὅπως προκληθῆ ἡ μικροτέρα δυνατὴ ζημία ὀχληρία ἢ ταλαιπωρία, ἀπαιτήσουν δικαίωμα διαβάσεως διὰ τῶν τεμαχίων 472, 11, 12 τοῦ Συμπλέγματος ‘A’ καὶ τοῦ τεμ. 129 τοῦ συμπλέγματος ‘B’ τοῦ χωρίου Ἀγ. Δομετίου καὶ
- (II) ὅπως οἱ αἰτηταὶ δυνάμει τοῦ κανονισμοῦ 6(2) τῶν περὶ Ἀκινήτου Ἰδιοκτησίας (Παροχὴ διόδων Κανονισμῶν) ἐντὸς 60 ἡμερῶν ἀπὸ τῆς ἡμερομηνίας τῆς ὠρισθησομένης ὑπὸ τοῦ Δικαστηρίου, ἐπιδώσουν πρὸς τοὺς ἰδιοκτῆτας τῶν ὑπὸ ἀναφορὰν τεμαχίων τὴν ἐν τῶ κανονισμῶ 3 προνοουμένην εἰδοποίησιν (τύπου Ν. 283) μετὰ τοῦ τοπογραφικοῦ σχεδίου.

Πρὸς τούτοις σᾶς ἐπισυνάπτω σχέδια εἰς τετραπλοῦν ἐπὶ τῶν ὁποίων δεικνύεται διὰ πρασίνου χρώματος ἡ προτεινομένη δίοδος καὶ παρακαλεῖσθε ὅπως ἐφοδιάσητε ἀνὰ ἓν ἀντί-

γραφον πρὸ τῆς 12.12.75 τόσον τὸ Δικαστήριον ὅσον καὶ τοὺς δικηγόρους τῶν διαδίκων μὲ ἀντίγραφον τῆς παρούσης ἐπιστολῆς.”

5 (“ I refer to the above application before the Court which relates to the above subject, as well as the acceptance by the Court of the unanimous suggestion of the advocates of the parties to carry out a new enquiry for the purpose of finding a new probable route satisfying the purposes and needs of the application under reference and wish to inform
10 you as follows:-

In the light of the new enquiry and in view of what has been stated in Court at the hearing of the above application on the 30th October, 1975, to the effect that on plot 1927, of Block B, there were erected new buildings, a thing that
15 was, also, ‘verified on the spot’, after a relevant permit was granted by the competent Authority and after the decision given by the Lands and Surveys Department, I suggest that:-

20 (I) It may be indicated to the applicants, that at present and for the purpose of causing the least possible damage, nuisance or inconvenience to claim a right of way through plots 472, 11, 12, of Block ‘A’ and through plot 129 of Block ‘B’ of Ayios Dhometios village and

25 (II) Under rule 6(2) of the Immovable Property (Grant of Access Rules) the applicant may serve on the owners of the said plots the notice provided by rule 3 (Form No. 283) together with a site plan, within 60 days from the date to be fixed by the
30 Court.

In this connection I enclose plans in quadruplicate on which the proposed route is shown in green and you are requested to furnish both the Court and the advocates of the parties with a copy, together with a copy of this letter,
35 before the 12.12.75.”)

The building permit by virtue of which the new buildings were erected on plot 1927, which was produced as *exhibit 5*, at the trial, was issued by the appropriate authority on 5/12/73.

From the D.L.O. plan and the architectural plan attached to this building permit the proposed new buildings consisted of a room to be built on the north western corner of plot 1927 abutting to the north on the south western boundary line of plot 132 and to the west on the north eastern boundary line of plot 1926. This room which is described in the permit as an auxiliary building, and which would have dimensions of 6x12 ft., was to be constructed with bricks and would be roofed with corrugated asbestos sheets and would be used as a laundry room.

Eventually the two applications came on for hearing before the trial Court on the 12th January, 1976. On that day at the commencement of the hearing counsel appearing for the applicants in Application No. 30/72 the owners of plot 1927 made the following statement to which the other counsel concerned agreed:

“ I have agreed with my learned friends that the hearing of all applications be heard together as they concern a common question of fact and law, the only difference is regarding the parties and the quantum of compensation. I have also agreed with my learned friends that the main issue, that is, whether the decision of the Director of Lands and Surveys should be cancelled, be heard and decided first and in case that it is decided that the decision of the D.L.O. is not disturbed, then to proceed for the assessment of compensation. If, however, the Court decides that the decision of the Director of Lands and Surveys is cancelled, then the case should not proceed here but the proceedings should be concluded in the District Court and either an appeal will be filed or a new application be made to the D.L.O. for consideration of a right of passage.”

This submission of counsel was accepted by the trial Judge and so the case proceeded and was heard only as against that part of the decision of the Director determining the route of the access.

Christodoulos Markides, the D.L.O. clerk in charge of the right of passage section, who carried out both local enquiries and prepared the two reports, *exhibits* 1 and 2, gave evidence and produced the relevant files and documents connected with

the case. He also stated that at the time he carried out the second enquiry he found new buildings standing on plot 1927 which were not in existence when he carried out the first one, and so in view of this he prepared his second report, *exhibit 2*.

5 He further stated that if he had to make a new suggestion for a right of passage he would suggest the passage referred to in his second report. However, had there not been new buildings on plot 1927 he would insist on his first recommendation. The new proposed passage starts from the south western corner of

10 plot 1926 along the northern boundary lines of plots 12 and 11 and the southern boundary line of plot 129 and proceeds to the west along the whole northern boundary line of plot 11 for a distance of 45 ft. It then turns south along the western boundary line of plot 11 for a distance of 35 ft. and then turns

15 to the west along the northern boundary line of plot 472 proceeding for a distance of 95 ft. and ends in Marathonos Street which is a blind alley. Its extent is 3180 square ft. and its estimated value is £1494.- The extent of the proposed passage through the properties of the respondents in these appeals is

20 880 square ft. its length is 100 ft. and its value is £765.- It is a straight passage.

Besides the D.L.O. clerk, Andreas Theocharous, the husband of applicant No. 1 in application 30/72, gave evidence and stated that in plot 1927, the property of his wife, there existed

25 an old building whereas there are no buildings on plots 472, 11 and 12. He also stated that the reason for building on plot 1927 although he had knowledge that the case was before the Court for a right of passage in favour of the appellants in these appeals, was because his sister-in-law was about to get

30 married and needed her house to live in.

Counsel for the respondents in the applications called no witnesses and left the case to be decided, as he stated, on the documentary evidence and on the oral evidence given by the D.L.O. clerk.

35 The trial Judge in his short judgment issued on 3/3/1976, had this to say at page 24 of the record:

“ I have heard the D.L.O. clerk who examined these cases, who gave a very clear picture of the situation and who has also produced in Court *exhibits 3 and 6*, files of the D.L.O.

regarding these applications and which are most enlightening. It appears that the respondent, who is the owner of plot 129, wanted and applied for a right of passage. The Director of Lands & Surveys on examination of this application for a right of passage agreed to give him a right through plots 132, 1926 and 1927. The reason for giving him this passage was that the owner of plot 1926 gave a right of passage free of charge and this fact, as the witness of the D.L.O. has said, was a decisive factor which was taken into consideration in granting the passage referred to above. The length of the road has also played an important part in his decision and also the fact that was going to a main road. As things went by and the case for one reason or another was delayed, it appears that the owner of plot 1927 obtained a building permit and built houses on his plot, thus obstructing the right of passage, and on the face of this new situation all counsel agreed on the 30th October, 1975, to request the D.L.O. to revisit the place and make a new assessment of the situation. The report of the Visiting Officer, Mr. Markides, who happened to be the same person as our witness in Court and the person who made the original assessment, filed a report dated 26th November, 1975. He says that indeed there are buildings on the passage in plot 1927 and he indicates that it would be fair that the applicants should apply for a right of passage through 472, 11 and 12 of block 'A' and plot 129 of block 'B', of the village of Ayios Dhometios.

I have carefully considered the applications before me, the evidence adduced, the affidavits in support of the applications and oppositions, the records, and generally all oral and documentary evidence before me. It is my opinion that the owner of plot 129 has been given excessive and preferential treatment by the D.L.O. by allowing him to have a passage on a main road through plots 132 and 1927. I do not think that the owner of a poor stretch of land who wishes to take advantage of the law should be given such advantages as to be detrimental to other land owners adjoining his property. In the case under consideration, the owner of plot 129 has manoeuvred his way through plots 132 and 1927 to have a passage through

land which is not only essential but indispensable to the owners of it. The owner of plot 132 will be manifestly and excessively influenced by a passage through it and the owner of plot 1927 has already got buildings on the passage which he built under a valid permit. If the owner of plot 129, and it appears that he has a 3 ft. right of passage through it which he has now been deprived of, he can claim damages, but it would be most unfair and unjust to order the owner of plot 1927 to demolish his buildings, ignore his liabilities, his duties and his obligations to his children to have them housed in that plot for the benefit of the owner of 129 and for what reason should anybody allow this audacious owner to tread through the plots of other people destroying buildings or space to make value or increase the value of a poor land that he owns by converting it into building sites with a passage to a main road!! It would be more just if such a passage led to the back road Marathon Street. The intention of the legislature was not, in my opinion, to accord owners of deserted or poor and isolated enclaved lands to award them with big passages leading to main roads, but as poor passage as possible, causing as little damage as possible to other land owners; that such owners of land wishing passage should not be given the shortest possible routes; or the cheapest possible passages leading to main roads. I think that such owners, if they wish to have a sort of passage, not only they should be prepared to pay good prices for affecting other people's properties, but also they should be given such passage as should give the least possible trouble to other land owners, no matter how long or obscured such path would be. The idea and the spirit of the law in my opinion is to give access not front main road entrances. In the present case, as I said earlier, the owner of plot 129 was given, in my opinion, such a treatment which was more favourable than he deserved and I, therefore, consider that the decisions of the D.L.O. applied for should be set aside and are hereby set aside. My decision does not influence any right which the owner of plot 129 may have against the owner of plot 127 for the alleged passage which has been interfered with by the owner of the plot 1927."

The grounds of appeal read as follows:

- (a) The learned trial Judge tried and decided the application subject matter of the appeal as if it were an application on the first instance and not an appeal against the reasoned decision of the District Lands Office of Nicosia. 5
- (b) The approach which a Court should follow in deciding an appeal of the above nature as expounded by the Supreme Court in the case of *Georghiou v. HjiPhessa* (1970) 1 C.L.R. 58, has been completely disregarded by the Court. 10
- (c) The Hon. Court took into account matters entirely irrelevant and extraneous to the case whilst ignoring other crucial and most relevant matter which should have affected his judgment. 15
- (d) The Hon. Court by its judgment in effect condoned the flagrant illegality of appellant who in accordance with the evidence of the D.L.O. clerk Mr. Markides constructed a building within the area of the right of passage granted to respondent on the 17.7.1972 by the D.L.O. on the 5.12.1973 whilst the present appeal was pending before the District Court of Nicosia. 20
- (e) The Hon. Court completely overlooked the fact that since the proposed new right passage involves a total area of 3180 sq. ft. and 175 ft. in extent and is valued at £1494.- as compared with the total area covered by the present right of passage which is only 880 sq. ft. and 100 ft. in extent and is valued at £765.- the only suitable passage was the one the D.L.O. had decided and the alternative totally unsuitable. 30

Counsel for the appellants in arguing this appeal submitted that the trial Judge nowhere in his judgment refers to any point of the decision of the Director where in his opinion the Director went wrong, and he does not even make a finding that the decision of the Director was wrong. The trial Judge did not, therefore, decide the case as an appeal under section 80 of Cap. 224 but as a case in the first instance. 35

Counsel for the appellants also put forward the argument

that the trial Judge in deciding the case took into account irrelevant factors and discarded the most relevant ones. He was influenced by the erection of the new buildings on plot 1927, at the time the case was pending before him, which were
5 erected in such a way so as to block the 3 ft. wide right of passage of appellant 1 as owner of plot 129. He did not take into account that the difficult situation was created by the owners of plot 1927 and that they should face the consequences. The fact that the new buildings were erected after obtaining a building
10 permit is of no significance. The second enquiry was carried out with the only object to find a solution for the settlement of the case and since no solution was found the case had to be decided on the facts prevailing at the time the first local enquiry took place. The D.L.O. clerk made it clear in his evidence
15 that had it not been for the new buildings he would stick to his first suggestion as regards the route of access to the properties of the appellants.

Counsel for the appellants finally submitted that even if we accept the route suggested by the D.L.O. at the second local
20 enquiry as an alternative one, the trial Judge never compared the two routes in the light of the decision of *Constantinos Nicolaou Georghiou v. Evangelia HjiGeorghiou HjiPhessa (supra)*.

The Immovable Property (Grant of Access) Rules 1967, which were made by virtue of the new section 11(A)(7) place
25 the machinery in the hands of the Director of Lands and Surveys for the accomplishment of that purpose. Under the said Regulations and in particular under regulation 6, the Director after carrying out a local enquiry and after taking into consideration all relevant factors, fixes the direction and extent of
30 the route of access. In case more than one property is considered suitable to serve the requirements of the dominant land, the Director is empowered to make a choice and decide on which property the right of passage will be created. In so doing he has to take into account the creation of the least
35 possible damage, nuisance and inconvenience. Thus, the Director in determining a right of passage is vested with discretionary powers in determining private rights. In other words, the Director is issuing a decision in the domain of private law. Therefore a District Court in reviewing the decision of
40 the Director should follow the principles on which the Supreme

Court in its administrative jurisdiction exercises judicial control over administrative acts or decisions in the domain of public law, with the only difference that the District Court in deciding an appeal under section 80 of Cap. 224, has power to substitute its own discretion for that of the Director whereas in a recourse under Article 146 of the Constitution, the administrative Court cannot substitute its own discretion for that of the Administration. However, the District Court will not lightly substitute its own discretion for that of the Director unless there are strong reasons proved by admissible evidence before it militating in that direction. As we have already said a wide discretion is vested in the Director under the law and the regulations made thereunder to determine, in the first place, as a person best qualified as an expert the direction and extent of a right of passage and the Court in the absence of concrete reasons cannot question his conclusions.

In the case of *Georghiou v. HjiPhesa (supra)* which was the first appeal of its kind against the decision of the Director of Lands and Surveys determining a route of access under the provisions of section 11(A) of Cap. 224 and the Regulations made thereunder, this Court approved the guiding principles and factors which were taken into account by the D.L.O. clerk in arriving at his decision. In that case at page 66 we read:

“ In giving his evidence he stated his guiding principles and the factors which he took into account in forming his opinion. Briefly they were the following: The distance of the proposed route, the creation of a straight route, as far as possible, and, generally, the minimizing of damage of the servient tenement or tenements.

The trial Court were satisfied that the Director followed the proper procedure and that his determination of the route of the access was the right one in the circumstances. Having given due consideration to the submissions made by appellant’s counsel today we find ourselves in complete agreement with the judgment of the trial Court.”

Having considered the facts and circumstances of this appeal in the light of the arguments put forward by counsel we must say that we agree with the submissions of counsel for the appel-

lants. It was on the respondents in this appeal to persuade the trial Court, by adducing oral and documentary evidence, that the decision of the Director complained of was wrong. Such evidence is lacking and on the contrary the evidence adduced proves that the said decision was a correct one.

The D.L.O. clerk in arriving at his first decision took into account the length of the proposed route, that this route was a straight one and, generally, the minimizing of the damage of the servient tenements, as well as the fact that there was a judgment of the Court for a passage of 3 ft. wide over plot 1927 and so only a strip of land from this plot of only 2 ft. wide was required.

The other material factor which was taken into consideration by the D.L.O. clerk was that the owner of plot 1926, the second appellant, had conceded a strip of land of 5 ft. wide to the proposed passage and that the 5 ft. strip of land which was required from plot 132 could not materially affect the owner of this plot as it is a large building site of two evleks in extent.

The trial Judge instead of making his findings on the evidence adduced as to where the Director went wrong, findings which in our view no Court of law could arrive at, on the facts and circumstances of this case, proceeded in the wrong direction and made the findings which have been referred to earlier on in this judgment, most of which are irrelevant and not based on the evidence adduced.

Before we conclude our judgment, we must reiterate what has been said time and again by this Court namely, that the hearing of cases piecemeal is entirely undesirable. The present case is a striking example why this Court has taken the above view. If the question of compensation had been determined by the trial Court together with the question of the validity of the Director's decision, this litigation which started more than six years ago, would today have come to an end. Now the case has to go back to the District Court to be tried on the question of compensation payable.

In the result, the appeals are allowed and the Director's decision is restored.

The case is remitted to the District Court before another Judge for the determination of the question of compensation.

The respondents to pay the costs of these appeals.

Appeals allowed with costs.