

1985 January 28

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

ATLAS PANTOU CO. LTD., AND ANOTHER,

*Applicants,*

v.

THE MUNICIPAL COMMITTEE OF LARNACA.

*Respondent.*

(Case No. 10181).

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5 *Streets and Buildings Regulation Law, Cap 96—Division of  
land into building sites—"Communication... in the area"  
in section 8(c) of the Law—Concept of—Appropriate Au-  
thority empowered to take into account in relation to  
such concept the aspect of the access of the plot, in  
respect of which a division permit is being sought, to a  
public road—Applicants' land not abutting a public  
road—Division permit rightly refused.*

10 The applicant companies, which were registered owners  
of a plot of land in Larnaca, applied to the respondent  
for a division permit in respect of their said property into  
34 building sites. In reply the respondent asked the  
applicants to submit plans in which there should appear  
15 that the road abutting their property was a public road  
which "continues and joins with the road system of the  
town"; and hence this recourse. Though the subject pro-  
perty was bounded on the one side by a public road,  
that road was not linked with any other public road  
in the area.

20 *Held*, that section 8(c) of the Streets and Buildings  
Regulation Law, Cap. 96 (as amended) empowers  
the appropriate authority, in this case the respond-  
ents, to take into account in relation to the con-

cept of "Communication.... in the area" the aspect of the access of the plot, in respect of which a division permit is being sought, to a public road; and that since the subject property was bounded by a public road, which was not linked with any other public road in the area, the respondent rightly refused the application in question; accordingly the recourse must fail (see *Kyriakides v. The Improvement Board of Eylenija* (1979) 3 C.L.R. 86 at p.90). 5 10

*Application dismissed.*

Cases referred to:

*Kyriakides v Improvement Board of Eylenija* (1977) 3 C.L.R. 198;

*Kyriakides v. Improvement Board of Eylenija* (1979) 3 C.L.R. 86 at p.90. 15

**Recourse.**

Recourse against the decision of the respondent to require from applicant to submit a plan in which there should appear that the road which abuts applicant's property is a public road before the respondent could proceed with the further study of applicants' application for a division permit of their property into building sites. 20

A. *Poetis*, for the applicants.

G. *Nicolaidis*, for the respondent. 25

*Cur. adv. vult.*

A LOIZOU J. read the following judgment. The applicant Companies are the registered owners of a plot of land at locality Salt-Lake in Larnaca or an extent of 22 donums and 3,500 sq. ft. On the 15th May, 1980, they applied to the respondent Municipality for a division permit of their said immovable property into 34 building sites and the construction of the appropriate streets of a length of 7,855 ft. The relevant application and the plan attached to it have been produced as Appendices 1 and 1(a). 30 35

According to their title-deed (Appendix 2), the said

property is bounded by "plot 20, hali-land; plot 18 Ttofis Ioannou Mavrovouniotis of Limassol: Scala boundary line: plot 15 hali-land road:-"

5 On the 6th October, 1980, after they had apparently made oral representations to the respondent Municipality, they addressed to them a letter (Appendix 3), in which they referred to their application and went on to say the following:

10 "In accordance with out title-deed our property abuts a public road which extends and passes from plot 37 block H Ayios Nicolaos Larnaca.

15 The part of the road in plot No. 37, which appears to be state land, is not in very good condition during the winter and it is not used easily when there is rain.

20 As this road in the State Land will serve also our property, when division permit into building sites is granted, we suggest that you take steps so that we may be permitted to construct ourselves this road by doing a filling up with earth to a height of one meter and laying foundation on top, when division permit of our properties is granted, as provided in the plans submitted in your file No. 328/80. Our declaration and commitment for the repair of the road in plot No. 37 relates also to the part of the existing road which abuts our property.

25 With the hope that with the above binding statement a division permit will be granted, we remain..."

30 On the 13th October 1980, the applicant Companies addressed a letter to the Larnaca District Lands Officer. In it they say:

35 "As it appears on a map scale 1/7500 the road between points A-B as shown on the attached survey plan, is seasonal but it clearly exists, but when the survey was carried out, probably it was not recorded on the maps with bigger scale and probably it was not recorded in the Lands Registry Office books.

Apart from the map 1/7500 there is the road in

front of plots No. 15 and No. 16, which is an extension of the road A-B in plot 37 and in addition to this the huge extents of land that are served by this road to the south of properties No. 15, 16 etc.

We are informed, on the other hand, that there exist witnesses that this road A-B has been in existence since about 40 years. 5

For the aforesaid reasons we apply that plot A-B, (as it is on the ground) be designated as public road, so that the responsibility undertaken officially and in a binding manner by the Lands Office and the State by describing in the title-deed the road A-B as public road, be justified. If this solution is not favoured by the State we suggest as alternative (but as a secondary) solution, the construction of a connecting road between points A-C exactly on the boundary of the area which is designated as Salt-Lake. We believe and we submit that the designation of A-B as a public road is a better solution from the designation of A-C. 10 15 20

Of course if the Appropriate Authority has criteria which justify the preference of A-B, no question arises that its view should prevail as to which is the preferable one from the two solutions."

On the 31st October, 1980, the respondent Municipality, wrote to the applicants a letter, Appendix 5, which says as follows: 25

"Reference to your aforesaid application for division of your plot under No. 16 s/p L/7... E.1 block M Larnaca in building-sites in order that I shall be able to proceed to its further study, you must submit to me plan in which there should appear that the road which abuts your property is a public road which continues and joins with the road system (οδικό δίκτυο) of the town." 30 35

It is against the decision contained in this communication that the applicant Companies filed the present recourse.

Before, however, addressing this letter to the applicant

Companies the respondent Municipality referred the application in question to the District Lands Office by letter dated 14th August 1980, (Appendix 3), in which they asked to be informed if the road which is given as one of the boundaries to the said plot of land extends and joins with the rest of the road net-work of the area and they further said:- "in case that the said road extends and joins the rest of the road net-work of the area, please have the said extension recorded on the L.R.O. plan and register it as a public road. In case that the said road does not extend and is not connected with the rest of the road net-work, please give me the reasons as to why it is only this part that is 'public road' and it does not join the rest of the road net-work."

To this letter the Acting District Lands Officer replied by letter dated 27th September 1980, (Appendix 4), informing them that "after exhaustive inquiry it has not been ascertained anything in relation to the said road which is mentioned as a boundary of the said plot. It has been surveyed, at it appears on the plan, in the year 1939 when the general registration took place and neither extends nor joins the rest of the road net-work of the area. This is due in my view, to the fact that the road was seasonal, passing through the Salt-Lake when only the water dried up in the summer could be used as a passage."

Affidavit evidence was produced on behalf of the applicant Companies. In paragraph 3(a) thereof it is stated that in the description of the boundaries of the subject property there "is mentioned the road which is shown also on the plan without, however, appearing on the plan that it is connected with any other public road, but it is interrupted in two points."

In paragraph (b) thereof it is stated that from a local inquiry the affiant "ascertained that the road which appears on the plan interrupted continues on the spot and joins with other public roads in two directions." In paragraph 4, of the affidavit the affiant, who is a retired District Lands Officer, Famagusta-Larnaca, during the year 1967-1983 states that from his experience and from the local inquiry he carried out on the spot and in the

plans he is certain that the Survey and Cartographic Department of the Lands Office, by mistake or omission did not show the existing roads on the plans on which the registrations were based.

I am afraid this affidavit does not take the case of the applicant Companies any further and I have to proceed on the basis that the road shown as boundary of the subject properties is not connected with the rest of the road network in the area. That being the position I turn to the relevant statutory provisions on which the respondent Municipality based its decision.

Section 8 of the Streets and Buildings Regulation Law, Cap. 96, as amended by Law No. 24 of 1978, in so far as relevant to the present proceedings reads as follows:

“8. Before granting a permit under section 3 of this Law, the appropriate authority may require the production of such plans, drawings and calculations or may require to be given such description of the intended work as to it may seem necessary and desirable and may require the alteration of such plans, drawing and calculations so produced, particularly-

(a) .....

(b) .....

(c) with the general object of securing proper conditions of health, sanitation, safety, communication, amenity and convenience in the area in which the intended work is to be carried out.

(d) with the object of securing the further improvement of the road network in the area.”

Paragraph (c) was judicially interpreted in the case of *Frixos L. Kyriakides v. The Improvement Board of Eylenja* (1977) 3 C.L.R. p. 198, where Malachos, J., held that the words “communication in the area in which the intended work is to be carried out” should be construed so as to mean communication within that area as well as with the outside world. This approach was upheld on appeal by the Full Bench reported as *Frixos Kyriakides v.*

*The Improvement Board of Eylenja* (1979) 3 C.L.R. 86, where at p. 90 the position was stated by Triantafyllides P., in delivering the judgment of the Court to be as follows:-

5 "In our opinion paragraph (c) of section 8 of Cap.  
96 does empower the appropriate authority, in this  
case the respondents, to take into account in rela-  
tion to the concept of 'communication ... in the area'  
the aspect of the access of the plot, in respect of  
10 which a division permit is being sought, to a public  
road.

We, therefore, find that it was within the proper  
exercise of the discretionary powers of the respondents  
to refuse the division permit applied for by the  
appellant."

15 It is clear therefore that though the subject property  
was bounded on the one side by a public road, that road  
was not linked with any other public road in the area and  
therefore the respondent Municipality rightly refused the  
application in question.

20 For all the above reasons this recourse is dismissed but  
in the circumstances there will be no order as to costs.

*Recourse dismissed with  
no order as to costs.*