

1982 June 25

[A. LOIZOU, SAVVIDES AND STYLIANIDES, JJ.]

CHARALAMBOS CHRISTODOULOU PEYIOTIS  
AND ANOTHER,

*Appellants-Applicants.*

v.

ANDREAS CHRISTODOULOU POLEMIDIS,

*Respondent.*

(Civil Appeal No. 5239).

*Immovable Property—Right of way—Termini (route) of the access  
—Determination of, by Director of Lands and Surveys—Section  
11A of the Immovable Property (Tenure, Registration and Va-  
luation) Law, Cap. 224 and rule 6 of the Immovable Property  
(Granting of Access) Rules, 1967—Director failing to take into  
consideration an alternative route which admittedly was the best  
—And took into consideration facts which he ought not to take  
—His decision wrongly reached—Set aside.* 5

This was an appeal against the judgment of the District Court  
of Paphos whereby the decision of the Director of Lands and 10  
Surveys Department granting a right of way in favour of re-  
spondent's immovable property over appellants' land was up-  
held. The right of way was granted under the provisions of  
section 11A\* of the Immovable Property (Tenure, Registration  
and Valuation) Law, Cap. 224 (as amended) and under the 15  
provisions of rule 6\*\* of the Immovable Property (Granting of  
Access) Rules, 1967. The termini - route - of the access granted  
was running across the middle of the properties of the appel-  
lants and the D.L.O. clerk who carried out the local inquiry  
and who in substance took the sub judice decision did not 20  
think fit to examine any other possible or alternative route.  
The D.L.O. clerk decided as he did because about 30 ft. from  
the public pathway and upto the end of one of appellants' plots

\* Section 11A is quoted at pp. 445-446 post.

\*\* Rule 6 is quoted at pp. 448-449 post.

there was a "sort of a road", which in effect was nothing more than a temporary layout made by the appellants when they were in the process of developing by excavators their properties. According to the D.L.O. clerk if the so-called road was not in  
5 existence the best route would be along the northern boundary of appellants' plots (route 13-14 on the plan).

Held, that in the light of the clear evidence of the local inquiry clerk adduced by the respondent and accepted by the District Court, the decision appealed against was wrongly  
10 reached in the sense that the Director and/or the land local inquiry clerk failed to consider at all route 13-14 which admittedly was the best, being shorter, less injurious, running along the northern boundaries of the servient tenements and reaching the main road and not the pathway, and he took into  
15 consideration the existence of a road which in substance and in fact was not a road but only a temporary construction made by the appellants not from the pathway to the other end of their properties but along part of the extent of one of their  
20 plots as a temporary means for their convenience for the development of their lands; that in reaching the decision as to the termini, ("katefthisis"), the Director failed to take into consideration facts which he ought to; that he did not advert to route 13-14 and he took into consideration facts which he ought not to, the existence of the so-called "road" in one of appellants'  
25 plots which was not a road; accordingly the appeal will be allowed, the decision of the Director will be set aside and a fresh inquiry and a new process to be taken by him in the exercise of his power under s.11 of Cap. 224 and the Immovable Property (Granting of Access) Rules.

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*Appeal allowed.*

Cases referred to:

- Re Sidebotham* [1880] 14 Ch. D.458;  
*Ealing Borough Council v. Jones* [1959] 1 All E.R. 286 at p. 289;  
*A-G. of Gambia v. N'Jie* [1961] 2 All E.R. 504 at p. 511;  
 35 *Valana v. Republic*, 3 R.S.C.C. 91;  
*Charalambides v. Republic*, 4 R.S.C.C. 24;  
*Georgiou v. HjiPhesa* (1970) 1 C.L.R. 58;  
*Kafieros and Another v. Theocharous and Others* (1978) 1 C.L.R. 619.

**Appeal.**

Appeal by applicants against the judgment of the District Court of Paphos (Laoutas, D.J.) dated the 21st May, 1973 (D.L.O. Appeals Nos. 11/72 and 12/72) whereby the decision of the Director of Lands and Surveys Department granting right of way in favour of respondent's immovable property over appellants' land was upheld. 5

*E. Efsthathiou with D. Koutras, for the appellants.*

*G.I. Pelaghias, for the respondent.*

*Cur. adv. vult.* 10

A. LOIZOU J.: The judgment of the Court will be delivered by Stylianides, J.

STYLIANIDES J.: This appeal is directed against the judgment of the District Court of Paphos whereby the decision of the Director of Lands and Surveys Department granting right of way in favour of respondent's immovable property over appellants' land was upheld. 15

The appellants are husband and wife. The appellant-husband is the registered owner of plots 89 and 88/2 of Sheet/Plan 45/21 and Plot 691/2 of Sheet/Plan 45/20 of Kili village, and the wife is the registered owner of plots 690 and 691/1 of Sheet/Plan 45/20. 20

The respondent is the registered owner of a vineyard shown on the D.L.O. maps as plot 92, Sheet/Plan 45/21, of Tsada village. This is an enclaved property and has no access on any public road. Plot 92 is abutting plot 88/2. Plot 690 has as its boundary the public road. All the said plots of the appellants on the plan are adjacent the one to the other and form one entity though each is covered by separate registration in the name of the appellants separately, as aforesaid. 25 30

The respondent applied to the D.L.O. of Paphos by Application No. 1710/71 under s.11A of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, as amended, for a right of way over the immovable property of the appellants. 35

The material part of s.11A before its amendment by Law

16/80, i.e. as in operation at the material time, was in the following terms:-

5 "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  
10 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.

15 (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.

20 (3) There shall be no obligation of the neighbour 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.

25 (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.

30 (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.

35 (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.

(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: 5

Provided that regulations made under this subsection 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. 10

(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". 15

The D.L.O. purporting to act under the provisions of the Law and the rules made by the Council of Ministers, the Im-movable Property (Grant of Access) Rules, 1967 made under s. 11A (7) issued and served the prescribed notices; a local inquiry was carried out on 6.3.1972 by Demos Panayiotou, a D.L.O. clerk, 2nd grade, in the presence of the respondent's father, the appellants and a representative of the chairman of the village committee. After the local inquiry the Director decided to grant a right of way in favour of plot 92 over plots 88/2, 89 and 690, the termini of such right being from the boundary line of plots 92 and 88/2 along the eastern boundary of plot 88/2, along the southern boundaries of plots 89 and 690, ending to a narrow public road or pathway. He made the necessary valuation and decided the compensation to be paid by the owner of the dominant tenement to the owners of the servient tenements. This decision was communicated to the interested parties, including the appellants, by notices dated 30.3.1972. On a map attached the direction of the passage was marked with red dotted lines. The appellants using the machinery of s.80 appealed to the District Court of Paphos. 20  
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Section 80 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.

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".

"A person aggrieved" is, in the absence of any definition in the particular context, incapable of any precise explanation. It is a phrase, however, which is continuously used in modern statutes without any explanation or definition being given in the statute. Ever since the judgment of James, L.J., in the case of *Re Sidebotham*, [1880] 14 Ch.D. 458, it has been generally accepted that the words "person aggrieved" in a statute connote the person with a legal grievance, that is to say, someone whose legal rights have been infringed.

Donovan, J., in *Ealing Borough Council v. Jones*, [1959] 1 All E.R. 286, said at p. 289:-

"If one came to the expression 'person aggrieved by the decision' without reference to judicial authority one would say that the words meant no more than a person who had the decision given against him; but the courts have decided that the words mean more than that and have held that the word 'aggrieved' is not synonymous in this context with the word 'dissatisfied'. The word 'aggrieved' connotes some legal grievance, for example, a deprivation of something, an adverse effect on the title to something, and so on".

Lord Denning in *A.-G. of Gambia v. N'Jie*, [1961] 2 All E.R. 504, at p. 511, said that the definition adopted by James, L.J., in the *Re Sidebotham* case above should not be regarded as exhaustive and he continued:-

“The words ‘person aggrieved’ are of wide import and should not be subjected to a restrictive interpretation. They do not include, of course, a mere busybody who is interfering in things which do not concern him, but they do include a person who has a genuine grievance because an order has been made which prejudicially affects his interests”.

A person aggrieved is almost synonymous with a person having a legitimate interest in public administrative law. In any view of the law as to “aggrieved persons”, the appellants are within the ambit of “aggrieved persons” and they were entitled to appeal to the District Court against the decision of the Director.

The Immovable Property (Granting of Access) Rules, 1967, official Gazette 1967, Supplement No. 3, p.282, rule 6 reads as follows:

“6.—(1) ‘Ο Διευθυντής, κατόπιν έπιτοπίου έρεύνης και μελέτης πάντων τών σχετικών στοιχείων και γεγονότων, καθορίζει την κατεύθυνση της δόδου, την έκταση του προς χρήση αυτής δικαιώματος του άποκτώντος μέρους και την ύπ’ αυτού καταβλητέαν άποζημίωση, και γνωστοποιεί τον ύπ’ αυτού καθορισμόν τών θεμάτων τούτων προς πάντα τά ενδιαφερόμενα μέρη.

(2) Έν περιπτώσει ύπάρξεως και άλλου ή άλλων άκινήτων πλην του δουλεύοντος άκινήτου τά όποια κατά την γνώμη του Διευθυντού είναι κατάλληλα διά την δημιουργίαν δόδου έπ’ αυτών, ο Διευθυντής δύναται να αναβάλη τον καθορισμόν της αίτουμένης δόδου και να ζητήσει παρά του άποκτώντος μέρους όπως, εντός εξήκοντα ήμερών από της έκφράσεως της τοιαύτης γνώμης υπό του Διευθυντού περι της ύπάρξεως και άλλων καταλλήλων άκινήτων διά την δημιουργίαν δόδου έπ’ αυτών, έπιδώση εις τον ιδιοκτήτην ή τους ιδιοκτήτας τών τοιούτων άκινήτων την εν τῷ Κανονισμῷ 3 προνοουμένη ειδοποίησιν, και επί τη συμμορφώσει του άποκτώντος μέρους προς τās προνοίας του Κανονισμού 4 και του Διευθυντού προς τās προνοίας του Κανονισμού 5, ο Διευθυντής κατόπιν νέας έπιτοπίου έρεύνης και μελέτης πάντων τών σχετικών στοιχείων και γεγονότων και επί τῷ σκοπῷ όπως προκληθῆ ή μικροτέρα δυνατή ζημία, όχληρία ή ταλαιπωρία άποφα-

5 σίζει ἐπὶ ποίου ἢ ἐπὶ ποίων ἀκινήτων θὰ παραχωρηθῆ ἡ δίοδος καὶ καθορίζει τὴν κατεύθυνσιν τῆς διόδου, τὴν ἔκτασιν τοῦ πρὸς χρῆσιν αὐτῆς δικαίωματος τοῦ ἀποκτῶντος μέρους καὶ τὴν ὑπ' αὐτοῦ καταβλητέαν ἀποζημίωσιν, καὶ γνωστοποιεῖ τὸν ὑπ' αὐτοῦ καθορισμὸν τῶν θεμάτων τούτων πρὸς πάντα τὰ ἐνδιαφερόμενα μέρη”.

10 (“6(1) The Director after a local enquiry and consideration of all the relevant material and facts, fixes the route of the access, the extent of the right to the use thereof by the acquiring party as well as the compensation payable by him and notifies all interested parties of the determination by him of these matters.

15 (2) In the case of the existence of another or other immovable properties other than the servient tenements which in the opinion of the Director are suitable for the creation of an access on them, the Director may postpone the determination of the applied for access and to request from the acquiring party, within sixty days from the expression of such opinion by the Director as to the existence of  
20 other suitable movable properties for the creation of access on them, to serve on the owner or owners of such immovable properties the notice required by rule 3 and on the acquiring party complying with the provisions of rule 4 and the Director with the provisions of rule 5, the Director  
25 after a new local enquiry and consideration of all the relevant material and facts and with the intention of causing the least possible damage, nuisance or hardship determines on which of the immovable properties will the access be granted and fixes the route of the access, the extent of the  
30 right to the use thereof by the acquiring party and the compensation payable by him, and notifies all interested parties of the determination by him of these matters”).

35 The Director is empowered after a local inquiry and consideration of all relevant factors to fix the direction and extent of the access. In doing so he has to take into account the cause of the least possible damage, nuisance or inconvenience. The Director is vested with discretionary powers and determines private rights. His decision is outside the ambit of paragraph 1 of Art. 146 of the Constitution. (*Savvas Yianni Valana v.*

*The Republic*, 3 R.S.C.C. 91; *Theocharis Charalambides v. The Republic*, 4 R.S.C.C. 24).

The Director and the land registry clerk who acts on his behalf is an arbitrator and his function is quasi-judicial. (*Constantinos Nicolaou Georghiou v. Evangelia HjiGeorghiou HjiPhesa*, 5 (1970) 1 C.L.R. 58). His quasi-judicial decision is an essential part of an administrative process. The rules of procedure provided in the law have to be observed. In determining a route due consideration to alternative routes has to be given.

The District Court in reviewing the decision of the Director 10 should follow the principles applied by the Supreme Court in its administrative jurisdiction in the domain of public law with the only difference that the District Court in deciding an appeal under s.80 of Cap. 224 is empowered to substitute its own discretion for that of the Director whereas in a recourse under 15 Art. 146 of the Constitution the Supreme Court cannot substitute its own discretion for that of the administration. (*Kafieros & Another v. Theocharous & Others* (1978) 1 C.L.R. 619). The District Court may make such order as may be just. 20 (Section 80 of Cap. 224).

The District Court had before it the reasoned decision signed by the District Lands Officer for the Director. Evidence was adduced by both sides.

R.W.1, Demos Panayiotou, is the D.L.O. clerk who carried 25 out the local inquiry and who in substance took the decision. His evidence was accepted by the trial Court. He admitted that the termini - route - of the access granted was along the boundaries of plots 690, 691, 89 and 691/2, thus running across the middle of the properties of the appellants, if considered as one 30 entity, but he reached that decision because about 30 ft. from the public pathway and upto the end of plot 690 there was a "sort of a road" which in effect was nothing more than a temporary layout made by the appellants when they were in the process of developing by excavators and otherwise their 35 properties. He did not think fit to examine any other possible or alternative route. He stated that if the so-called road was not in existence, the best route would be along No. 13-14 on the plan (exhibit No. 2), that is to say, along the northern boundary of plots 88/2, 89 and 690. Route 13-14 starts from

the main public road in the area and runs along the edge of plots 690, 89 and 88/2. It is shorter to the one determined by him. He admitted that plots 691/2, 89, 690 and 690/1 are one unity on the spot with the exception of some natural "ochtos" at some points which could be demolished in the development of these lands. The best route would be along the line from point No. 13-14 on the plan (exhibit No. 2); if a road or a passage cuts a property into two, the property is injuriously affected.

10 There was evidence before the District Court that in 1972 there was no more any road in plot 690 as, having served the purpose of its construction, the "road" was demolished by the appellants.

In the light of this clear evidence of the local inquiry clerk adduced by the respondent and accepted by the District Court, we are of the view, and so hold, that the decision appealed against was wrongly reached in the sense that the Director and/or the land local inquiry clerk failed to consider at all route 13-14 which admittedly was the best, being shorter, less injurious, running along the northern boundaries of the servient tenements and reaching the main road and not the pathway, and he took into consideration the existence of a road which in substance and in fact was not a road but only a temporary construction made by the appellants not from the pathway to the other end of their properties but along part of the extent of plot 690 as a temporary means for their convenience for the development of their lands. In reaching the decision as to the termini, ("katefthisis"), the Director failed to take into consideration facts which he ought to. He did not advert to route 13-14 and he took into consideration facts which ought not to, the existence of the so-called "road" in plot 690 which was not a road.

In view of the foregoing the appeal will be allowed.

It gave us some concern whether to make an order ourselves but in view of the fact that this appeal for reasons wholly unconnected with the Court but only with the litigants, it was taken up by this Court as late as May, 1972, and the conditions in the area might have radically changed, we prefer only

to set aside the decision of the Director and direct a fresh inquiry and a new process to be taken by him in the exercise of his power under s.11 and the Immovable Property (Grant of Access) Rules.

With regard to costs, we see no reason why the costs should not follow the event both in this Court and in the Court below.

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*Appeal allowed with costs.*