REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

CIVIL CASE NO. 2414 OF 1979

REGINALD DESTRO & 3 OTHERS.....PLAINTIFFS

VERSUS

THE ATTORNEY-GENERAL.....DEFENDANT

JUDGMENT

The four plaintiffs were the leasees of Villa Franca Farm comprising two pieces of land known as Land Reference 11307 and Land Reference 11308, measuring a total of approximately 1054 acres held on 999-year leases from the Government of Kenya when, in 1972, the Commissioner of Lands purported to acquire the farm compulsorily under the powers conferredon him by the Land Acquisition Act. The plaintiffs now sue the Attorney- General on behalf of the Commissioner of Lands for an order to recover the farm on the grounds that the acquisition was *ultra vires* section 75 of the Constitution of the Republic of Kenya and the provisions of the Land Acquisition Act, and in particular section 6.

The defendant denies that the acquisition was *ultra vires* and, in lastminute amendments, pleads estoppel, laches and acquiescence. Leave to make these amendments was opposed by Mr Dobry QC, who appeared with Mr Inamdar and Mr Sandhu for the plaintiffs, on the ground that they were unarguable. Mr Dobry suggested that time might be saved by hearing submissions on these matters *de bene esse* and ruling on the question of leave at the end of the case. Although Mr Shields, who appeared with Mr Ole Keiuwa for the defendant, was not entirely happy about this, I decided to adopt this course and shall later in this judgment make my ruling.

The facts are to be found mainly in the documentary evidence, in particular an agreed bundle of documents and a smaller related bundle. No oral evidence was called by the plaintiffs. The defendant called two witnesses, Mr O'Loughlin (the Commissioner of Lands at the material time) and Mr Pandya (the senior valuer in his department), much of whose evidence Mr Dobry submitted was inadmissible; but, again, to save time and obviate frequent interruptions he left the Court to decide on admissibility at the end of the hearing. I shall take account only of such evidence as I consider to be admissible.

There is no dispute as to the main facts. The plaintiffs' leases are for agricultural purposes and grazing only. The land is adjacent to the industrial area of Nairobi. As long ago as 1954, the plaintiffs appear to have had in mind the possibility of selling the farm (or part of it) but were advised that it would be a very inopportune moment to do so. In 1969 the Commissioner of Lands considered the idea of purchasing Land Reference 11308 as an extension to the industrial area. A tentative lay-out for industrial plots was prepared and the senior valuation officer was asked to value the land on the basis of agricultural user. On 3rd November 1969, Mr Flatt of Tysons Ltd informed first the plaintiff that a buyer had been found for the farm at £20,000. This buyer was the Government. Mr Flatt and the Commissioner of Lands were subsequently told that the farm was not for sale. On 31st March 1970, the Commissioner of Lands reverted to the possible purchase of the farm in a letter to Messrs Daly & Figgis, the plaintiffs' advocates.

> In view of the long-term planning interests of Nairobi [he wrote] and the need if possible for the larger areas to be properly planned and developed when they are ripe for such development, I have been instructed to pursue the possible purchase of the above-mentioned property.

Between July and September 1971 the plaintiffs were in touch with Mr FE Charnley, a land consultant, and a retired Commissioner of Lands. In a letter dated 26th July, 1971, to Mrs Grainger, one of the plaintiffs, he wrote:

> It is the Government's desire to extend the Nairobi industrial area and for some years past the possibility of buying Land Reference 11308 for the purpose of this extension has been under consideration. The approach which was made ostensibly on the Government's behalf by Mr P Flatt of Tysons Ltd some time ago, was premature to the extent that at that time the Government had not earmarked funds specifically for the purchase of the farm, but Mr Flatt's approach was nevertheless indicative of the sort of purchase price that the Government had in mind.
>
> As I explained, the Government will only pay the agricultural value of the land plus a small element for its potential for other use and on this basis it is unlikely that any offer from the Government will exceed £25,000-£30,000. A skilled professional valuer acting on your behalf might possibly persuade the Government to pay a higher sum for the alternative use potential than would otherwise be the case, but this is the only direction in which any improvement on an initial offer could be hoped for. You would of course, assuming that purchase was by compulsory powers under the Land Acquisition Act 1968, be paid 15 per cent in addition to the market value of the land to compensate for the inconvenience of having the land taken off you and you would also be able to claim professional charges which you had had to meet in connection with the acquisition.

Later in the same letter Mr Charnley suggested the possibility of promoting the development of part of the farm with the participation of a land development company and the following passage occurs:

> The success of this course of action will entirely depend on whether it proceeds under suitable sponsorship. If it can be represented that you, and other members of your family as expatriate landowners, are seeking to make a speculative profit by obtaining change of use, then the chances of success will be very small indeed. If, on the other hand, you are able to bring in suitable local interests and so to finance the operation that positive benefits to local people will be achieved, then a scheme of this sort might well be accepted. Apart from the ICDC it might be possible when a more definite stage has been reached, to interest the Commonwealth Development Corporation in investing in the project.

The plaintiffs so far as can be gathered from the correspondence showed no interest in this suggestion. On the contrary Messrs Daly & Figgis informed the Commissioner of Lands (entirely without prejudice) on 11th January 1972 that their clients (ie the plaintiffs) might be interested in selling the farm, provided that a satisfactory price could be agreed and provided that they could retain 40 acres. Mr Pandya, the senior valuer, replied suggesting a meeting; but he reduced the suggested 40 acres to 20 acres, being the area where the plaintiffs' houses were built. From subsequent correspondence it seems that the plaintiffs were content to retain 20 acres; but a manifestly inadequate offer was made on 27th April 1972 by the senior valuer, based on the fact that the farm (apart from two quarries) was not being used. Before negotiations were concluded with regard to the purchase price, the Commissioner of Lands wrote the following letter (reference "26127/11/34") to the Permanent Secretary, Ministry of Lands and Settlement on 6th November 1972 :

> The Land Acquisition Act 1968
>
> Villa Franca, Farm Embakasi,
>
> Nairobi Land reference 11307 and 11308-1054 acres

> As you are aware, I am trying on behalf of the Government to acquire the above-mentioned farm by way of negotiation for almost two years for future urban development but I have not succeeded so far. Lately, a prominent businessman has shown interest in the purchase of this farm and although in view of this development, it will probably cost the Government more than the original estimate of £35,000, I suggest it is now important that we commence compulsory acquisition immediately. The new airport road complex will also pass through this farm as shown on the attached map.
>
> Before I can take any action, the Minister must be satisfied under section 6(1) of the Land Acquisition Act 1968 that the land is required for a public body, that the acquisition is necessary and justified and so certify in writing to me and direct me to acquire the land compulsorily under the Act. I should, therefore, be obliged if you would let me have the Minister's official certification and direction to compulsorily acquire the land as soon as possible.

On the same date the Minister for Lands and Settlement wrote to the Commissioner of Lands as follows:

> Land Acquisition Act 1968
>
> Land for Urban Development
>
> Villa Franca Farm, Embakasi, Nairobi
>
> Land Reference 11307 and 11308-1054 acres
>
> In accordance with the requirements of section 6(1) of the Land Acquisition Act 1968 I am satisfied that the land mentioned in schedule as mention your letter Ref 26127/11/34 of 6th November 1972 is required for a public purpose. Accordingly, I direct you to acquire this land compulsorily under section 6(1) of the Land Acquisition Act 1968.

There were no firm planning proposals at that time, but a tentative layout had been prepared for valuation if required by the Commissioner of Lands.

A notice of intention to acquire the land (Land Reference 11307 and 11308) "for the future urban development" was subsequently published (Gazette Notice 3632 of 1972) in pursuance of section 6(2) of the Land Acquisition Act. On the same date, a notice was published under section 9(1) of the Act of an inquiry to be held for the purpose of hearing claims for compensation.

The plaintiffs accepted an award of Kenya £37,375 subject to being able to negotiate a three-year lease-back of the residential element in their occupation at a reasonable rent and permission to remit the entire amount of compensation abroad. The area of 20 acres (including the buildings) was leased back at a rental of £1800 per annum, full compensation was paid and the money remitted abroad. The plaintiffs were advised throughout by Mr CPV Walker of Tysons Ltd and by Messrs Daly & Figgis. I can find no suggestion in their exhibited correspondence that the plaintiffs were in any way dissatisfied. The award was published and also notification that the land had been taken possession of and that it was accordingly vested in the Government. The transfer was duly registered.

Between 1977 and 1979 approximately 100 acres was sub-divided and the sub-divisions allocated to persons other than public bodies for industrial development. Apart from this the land still remains undeveloped. There were twenty-one such grants. Five of those were subsequently transferred by two profiteers for sums greatly exceeding the amount of the premiums.

On 25th July 1978, the plaintiffs instituted this action.

It will I think be convenient to deal first with the amendments to the defence for which Mr Shields sought leave at the commencement of the hearing. These proposed amendments read as follows:

3. Insert in paragraph 10

Further or alternatively the plaintiffs agreed to accept the amount and the lease-back referred to in paragraph 8 of the plaint. In pursuance of the said agreement the Commissioner of Lands paid the plaintiffs the said amount, obtained the appropriate permission for the plaintiffs to remit the said amount to a country of their choice and leased back the said part of the property to the plaintiffs for the term agreed. The plaintiffs cannot now be heard to say that the said compulsory acquisition of the lands was void and unconstitutional.

4. Insert in paragraph 11

The Commissioner of Lands has allotted portions of the said lands on the basis that the lands have vested in the Government. The plaintiffs claim accordingly is barred by laches, acquiescence and the principle of *Ramsden v Dyson* and section 138 of the Indian Transfer of Properties Act.

No sufficient reason was given for the delay in making the application. It is of course the practice to allow an amendment of the pleadings at any time for the purpose of determining the real question in controversy between the parties or of correcting any defect or error in the proceedings. Mr Dobry however, opposed the application on the ground that the matters raised were unarguable.

There is no doubt on the evidence that the plaintiffs were quite satisfied with and accepted the award. There has been no offer to bring the money back into Kenya, or to refund it. The idea of questioning its validity only occurred to them seven years later when they heard of the enormous profits made by two speculators. Are they now estopped from doing so? A number of authorities were cited by both Mr Dobry and Mr Shields but I think it is sufficient to quote the following passages from *Wade's Administrative Law* (4th Edn) page 220:

> In public law the most obvious limitation on the doctrine of estoppel is that it cannot be invoked so as to give an authority powers which it does not in law possess. In other words no estoppel can legitimate action which is *ultra vires*.

As an example, the author cited *Swallow & Pearson v Middlesex County Council* [1953] 1 WLR 422 where the defendant had served on the plaintiffs an invalid notice requiring them to discontinue work on their premises. It was held by Parker J that no amount of so-called waiver or approbation could make it a valid document and the plaintiffs were not estopped from disputing its validity. The following passage occurs at page 222:

> Waiver and consent are in their effects closely akin to estoppel, and not always clearly distinguishable from it. But no rigid distinction need be made since for present purposes the law is similar. The primary rule is that no waiver of rights and no consent or private bargain can give a public authority more power than it legitimately possesses. Once again, the principle of *ultra vires* must prevail when it comes into conflict with the ordinary rule of law.

Moreover it is quite clear that the defence of acquiescence can only be raised against a party who knows of his rights. As Lord Diplock put it in *Kammins Ballrooms Co Ltd v Zenith Investments (Torquay) Ltd* [1971] AC 850, 884:

> … the party estopped by acquiescence, must at the time of his active or passive encouragement, know of the existence of his legal right and of the other party's mistaken belief in his own inconsistent legal right. It is not enough that he should know of the facts which give rise to his legal right. He must also know that he is entitled to the legal right to which these facts give rise.

The plaintiffs were advised by a well-known and highly respected firm of advocates at the time of the acquisition; but there is nothing in the evidence to suggest that the plaintiffs knew their rights (assuming that the acquisition was *ultra vires* and that they had such rights, other than the right to full compensation).

Similar considerations apply to the doctrine of approbate and reprobate. In making an election a person should have information as to the alternative rights open to him. The principle of *Ramsden v Dyson* (1866) LR 1 HL 129 is also inapplicable. The plaintiffs were not aware of their alleged rights until portions of the land had been allocated and built on. Mr Shields did not press the question of laches.

I think that Mr Dobry was right and the matters raised in the proposed amendments are unarguable. I therefore refuse leave to amend and shall proceed now to consider whether or not the acquisition was *ultra vires.*

Section 75 (1) and (2) of the Constitution reads as follows:

> (1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say:
>
> (a) the taking of possession or acquisition is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilisation of any property in such manner as to promote the public benefits and
>
> (b) the necessity therefore is such as to afford reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property and
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> (c) provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of full compensation.
>
> (2) Every person having an interest or right in or over property which is compulsorily taken possession of or whose interest in or right over any property is compulsorily acquired shall have a right of direct access to the High Court for:
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> (a) the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensationto which he is entitled; and
>
> (b) the purpose of obtaining prompt payment of that compensation.
>
> Provided that if Parliament so provides in relation to any matter referred to in paragraph (a) [of this subsection] the right of access shall be by way of appeal (exercisable as of right at the instance of the person having the right or interest in the property) from a tribunal or authority, other than the High Court, having jurisdiction under any law to determine that matter.

Section 6 (1) and (2) of the Land Acquisition Act provides:

> (1) Where the Minister is satisfied that any land is required for the purposes of a public body, and that-
>
> (a) The acquisition of the land is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilisation of any property in such manner as to promote the public benefit; and
>
> (b) the necessity therefore is such as to afford reasonable justification for the causing of any hardship that mayresult to any person interested in the land, and so certifies in writing to the commissioner, he may in writing direct the commissioner to acquire the land compulsorily under this part.
>
> (2) On receiving a direction under subsection (1) of this section, the commissioner shall cause a notice that the Government intends to acquire the land to be published in the Gazette, and shall serve a copy of the notice on every person who appears to him to be interested in the land.

Thus under the Constitution two conditions must be satisfied: (1) the acquisition was on 6th November 1972 (the date of the Minister's certificate) necessary in the interests of town and country planning or the development of the property in such manner as to promote the public benefit; and (2) the necessity was such as to afford reasonable justification for the causing of any hardship that might result to the plaintiff.

Provision is made by the Land Acquisition Act for prompt payment of full compensation. Paragraphs (a) and (b) of section 6(1) of the Land Acquisition Act are derived from the provisions of section 75 of the Constitution. The Minister of Lands and Settlement had (a) that, on 6th November 1972, the land was required for the purposes of a public body; (b) that the acquisition was necessary; (c) that it was necessary in the interests of town and country planning, or the development of the property in such manner as to promote the public benefit; and (d) that any hardship caused to the plaintiffs was reasonably justified. He had then to issue a certificate to that effect and give a direction to the Commissioner of Lands to acquire the land compulsorily.

Mr Dobry submitted that an action is only "necessary" for a particular purpose when that purpose could not otherwise be achieved. He cited a number of English decisions. These, however, are decisions in relation to the powers of railways and local authorities to take land for the construction of a particular project and have no application to the present case. The words appearing both in section 75 of the Constitution and section 6(1) of the Land Acquisition Act are "in the interests of" followed by such expressions as "public morality" and "public health". How is one to be satisfied that public morality or public health can be achieved only by acquiring a particular area of land?

He further submitted that there was no power to deprive a person of property in advance of requirements. He referred to *Palmer v Minister of Housing and Local Government and Romford Corporation* (1952) 3 P & CR 165. The question there was whether or not a compulsory purchase order was *ultra vires* on the ground that the land acquired for playingfields was not required for that purpose on the day the order was made. Singleton J held that there was evidence upon which the Minister was entitled to take the view that the local authority required the land in question for the purpose of a playing-field at the time the order was made. In the present case how is one to determine whether an acquisition made in the interest of town and country planning or development in such manner as to promote the public benefit is not in advance of requirements? As Mr Shields submitted, the Government of a developing country such as Kenya must have a land bank available for development when required in order to take advantage of aid offered by developed countries and such institutions as the World Bank. The same criterion as to the time of requirement cannot be applied to such interests as to a specific purpose such as a playing-field. Likewise, the English authorities cited to support the proposition that it is not necessary to take over the whole of a property when part will do relate to the acquisition for such works as road-widening and are hardly relevant to the acquisition of a farm of 1054 acres for the purpose of urban development.

There is no dispute that the mere assertion of the Minister that the necessary conditions have been satisfied is insufficient. There must be evidence to support that assertion. Some evidence is to be found in the documents. In addition there is the evidence of Mr O'Loughlin who advised the Minister.

One must know the material which was before the Minister at the time he certified his satisfaction. Mr O'Loughlin has testified as to what that material was. Mr Dobry submitted that much of this evidence was inadmissible having regard to the pleadings. It was necessary to look first at paragraph 10 of the plaint which reads:

> During 1977 the Commissioner of Lands caused a part of the said farm measuring approximately 100 acres to be sub-divided and such sub-divisions have been allocated to persons other than a public body for industrial development. Save for such sub-division the land has not been developed in any way.

In paragraph 5 of the defence this allegation is denied and the paragraph continues:

The defendant above named further states that the suit premises have been planned for industrial development for medium and low-cost houses and flats for Nairobi City Council and World Bank aid site

and service scheme.

Asked for particulars of these plans, the defendant eventually answered by reference to various plans prepared subsequent to the acquisition. Mr Dobry submitted that the defendant could not rely on subsequent events. Paragraph 5 of the defence, however, was in reply to an averment relating to subsequent events. The defendant's reference to these plans appears to me to be intended to show that the sub-divisions and allocations referred to in paragraph 10 of the plaint were made in accordance with the Government's development plans.

In reply to a request for particulars of the defendant's denial that the compulsory acquisition was *ultra vires* and with respect to the necessity of the acquisition, the defendant replied by reference to documents which were subsequently included in the agreed bundle of documents. The evidence of Mr O'Loughlin was based on these documents but included in addition the information he conveyed orally to the Minister before the Minister signed the certificate. It is I think admissible evidence.

The material before the Minister thus consisted of the Commissioner of Land's minute dated 6th November 1972 to the Permanent Secretary, Ministry of Lands and Settlement, and the information given by Mr O'Loughlin to the Minister in an interview which he said lasted about one hour.

In his minute the Commissioner of Lands said that he had been trying on behalf of the Government to acquire Villa Franca Farm by way of negotiation for almost two years for future urban development but had so far not succeeded. It was important to commence compulsory acquisition immediately in view of the interest a prominent businessman was taking in purchasing the farm. He then refers to the provision of section 6(1) of the Land Acquisition Act and (perhaps with a certain lack of the customary civil service deference) requests the Minister's certificate and direction as soon as possible. However, he was afforded an opportunity of explaining his request to the Minister. He took his files and maps and argued the case for industrial development in that area. He explained with what the Minister had to satisfy himself under the Act and the Constitution. At the Minister's request he told him who were the owners and gave him particulars of the development and use of the land. He stressed the important position of the land between the industrial area and the proposed new international airport and suggested that, apart from the land required for road works and his wishes for further land for industrial development, he thought that it was inappropriate to permit any development other than by the Government. On the question of hardship, he was prompted by a leading question; but I accept that he discussed this matter also with the Minister to whom he suggested that the hardship suffered by the plaintiffs could not be compared with the benefit which would derive from the properlyplanned and ordered development of the area with services provided by funds from Government sources and Government aid sources. The plaintiffs' title was restricted to agricultural user and grazing and the possibility of their obtaining a change of user (had they desired it) was remote and would have involved the surrender of their agricultural leases. Mr O'Loughlin said he was driven to take action when he did by the danger of certain influential people obtaining the land, together with a change of user (presumably through an approach to the late President). He explained the obvious advantages of Government development over private development.

Mr Dobry submitted that the real purpose of the acquisition was the reduction of compensation, the prevention of speculation or resale for which there is no provision in the law. In this connection he cited *Municipal Council of Sydney v Campbell* [1923] AC 338. The council was empowered to purchase or resume land required for "carrying out improvements in or remodelling any portion of the city". No plan of improvement or remodelling was at any time before the council and it was held on the evidence that lands were required not for such purpose but to get the benefit of any increment in the value of them arising from the extension of Martin Place and thus, in some degree at all events, recouping the municipality the cost of this extension. The Judicial Committee of the Privy Council held that:

> A body such as the municipal council of Sydney, authorised to take land compulsorily for specified purposes will not be permitted to exercise its powers for different purposes, and, if it attempts to do so, the Courts will interfere.

In the present case the authorisation is in much more general terms. Although the actual timing of the

acquisition was governed by the need to prevent an influential speculator from frustrating the Government's plans for developing the land, the intention to acquire the land either by negotiation or compulsorily had been indicated some years earlier. There was no question of reducing the amount of compensation to· be paid to the plaintiffs, who received the value of their interest. They had no right whatsoever to the development value of the land. There was in my view no need for the prior existence of a firm development plan. As Mr Pandya said (and I think his evidence is admissible in so far as it disclosed the system in use) development plans were not prepared before acquisition because that implied that a change of user had been approved and, in addition, resulted in the need to pay rates. It is true that the land was not used immediately; but it was sufficient, I think, that for some years the Government had been considering and making tentative plans for the extension of the industrial area. The area had to be properly planned and developed. A private developer who succeeded in obtaining a change of user would have upset these plans. There was imminent danger that such a person (not the plaintiffs) with the influence required to obtain a change of user was about to do so. To prevent this happening immediate compulsory acquisition was necessary. Such acquisition was in the interests of town and country planning and the development of the property in such manner as to promote the public benefit, not for the purpose of reducing the amount of compensation or making a profit. The subsequent sub-division and allocation of plots were effected in those interests.

There was I think material on which the Minister could properly be satisfied that on 6th November 1972 the land was required for the purposes of a public body, that the acquisition was necessary in the interests of town and country planning and the development of property in such manner as to promote the public benefit.

With regard to hardship the farm was not in use for any purpose other than residential, quarrying and for *safari* business (which was not an authorised use), the owners had shown an interest in selling, and they would receive full compensation. Indeed Mr Charnley in his letter dated 26th July 1972 appears to suggest that compulsory acquisition would prove more advantageous to the plaintiffs than a voluntary sale. There was ample justification for causing any hardship resulting from leaving houses which would clearly in the course of a short time be surrounded by industrial property; and such hardship was in fact mitigated by a leaseback of the residential part of the farm.

I turn now to the certificate signed by the Minister. It appears to be in the inappropriate form in use before the present Land Acquisition Act came into force. It refers to a non-existing schedule but the land is adequately described in the heading. The matters on which the Minister is satisfied are not set out; but it refers to section 6(1) of the Land Acquisition Act in which those matters are set out. The land is stated to be required for a public purpose not for the purposes of a public body. Even this mistake, I think, is saved by the reference to section 6(1) of the Act and no-one interested could have had any doubt that the land was required for the purposes of a public body, namely the Government. Although the interests for which acquisition was necessary are not stated, the heading "Land for Urban Development" indicates that it was either town and country planning or the development of property in such manner as to promote the public benefit.

Reference was made to Lord Mansfield's judgment in *R v Croke* (1774) 1 Cowp 26, 29, in which he said:

> This is a special authority delegated by the Act of Parliament to particular persons, to take away a man's property and estate against his will; therefore it must be strictly pursued, and must appear to be so upon the face of the order.

In that case the persons who appeared on the face of the order to have taken away the property in question were not the particular persons to whom special authority was delegated. In the present case there is no error on the face of the certificate, despite the imperfect drafting.

Mr Dobry said he relied on Hancox J's rulings in *Re Kisima Farm Ltd* [1978] Kenya LR 36 and *Re Marania Ltd* (unreported), both applications for prerogative writs relating to land acquisition. In both cases the Gazette Notices expressing the Commissioner of Land's intention were defective in that not only was no public body specified but also no particular purpose was specified. The land in question was

in fact required for resettlement of certain members of the Meru tribe, clearly not a public body. Also relied on were the two judgments, my own and that of Platt J, in *Re Hardial Singh* [1979] Kenya LR 18. In this case an order for the sale of a farm had been issued by the Minister of Agriculture under the provisions of the Agriculture Act relating to mismanaged farms. It not only wrongly named the registered owners of the land, but stated that they had not been able to satisfy him that they were able to develop the land whereas the Act empowers the Minister to issue such an order only where a farm has been mismanaged. No opportunity had been given to the owner to make representations regarding the allegation of failure to develop and there was, moreover, ample evidence to show that there was no foundation for it.

The present case concerns an acquisition for a *bona fide* and proper purpose and had nothing in common with these cases. As there was ample material to satisfy the Minister that all the conditions existed for issuing a proper certificate, I would not be justified in holding that the acquisition was *ultra vires* merely because the certificate of the Minister was badly framed. It is, I hold, sufficient, to meet the requirements of the Act.

In paragraph 12 of the plaint it is alleged that the acquisition procedure did not conform with the provisions of sections 3 and 4 as well as section 6 of the Land Acquisition Act; but it was not contended that a preliminary notice that the need for acquisition was likely to arise was necessary under section 3. Section 4 merely provides powers of entry after publication of a preliminary notice. The plaintiffs' suit is dismissed.

Action dismissed.

Dated and delivered at Nairobi 21st March 1980.

A.H SIMPSON

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JUDGE.