



**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL  
AT NAIROBI**

**CIVIL APPEAL NO. 206 OF 1998**

**NJILUX MOTORS LIMITED ..... APPELLANT  
versus  
KENYA POWER & LIGHTING CO. LTD.  
NAIROBI CITY COMMISSION ..... RESPONDENTS**

**(Appeal from the judgment of the High Court of Kenya at Nairobi (Mbogholi-Msagha, J) dated  
21st May, 1998 in**

**H.C.C.C. NO. 1887 OF 1994)**

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**JUDGMENT OF TUNOI, J.A.**

I have read in draft the judgments prepared by Omolo and Shah, JJ.A. and I agree with them. I also agree with the orders proposed by them

.Land Reference Number 209/11590 (originally part of 209/6559/R), the suit land, measuring 0.6625 hectares or thereabouts is situate on the corner of Forest Road and Limuru Road, Nairobi. It was excised out of the popular City Park whose title vests in the City Council of Nairobi through Grant No. I.R. 21112 dated 16th March, 1966. The land is subject to the special conditions set out in the Grant, the most relevant to the matter before us being that:

*"The land and buildings shall only be used for open space, park, sports grounds and any other municipal purposes to be approved by the Commissioner of Lands in writing."*

For undisclosed reasons and probably through corrupt practices, the City Council of Nairobi blatantly breached this special condition and caused the suit land to be allocated to the appellant for its use as a business premises for sale of motor vehicles. The breach is openly admitted.

Unknown to the City Council of Nairobi and to the appellant, The Kenya Power and Lighting Company Limited (KPLC) on 5th September, 1991, applied for allocation of the suit land and was subsequently issued with a Grant for a lease for a term of 99 years from 1st August, 1992.

The Commissioner of Lands through an oversight did not first seek and obtain the surrender of head title from the City Council of Nairobi before issuing a new Grant to KPLC..

KPLC required the suit land for improvement of its congested facilities for supply of power to many residential parts of Nairobi so as to minimise the frequent black outs experienced by the residents of Nairobi.

As of now, therefore, KPLC has title. The appellant does not. The City Council of Nairobi does not complain that the Commissioner of Lands unlawfully deprived it of its land. It does not challenge the new Grant. Section 23 (1) of the Registration of Titles Act gives KPLC an absolute and indefeasible title to the suit land. Its title under the present circumstances takes precedence over all other alleged equitable or any other rights the appellant may possess over it.

Dated and delivered at Nairobi this 31st day of March, 2000.

P. K. TUNOI

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR