

MOULINIE v GOVERNMENT OF SEYCHELLES

(2012) SLR 116

Phillip Boulle SC for the petitioner
Alexandra Madeline for the respondents

Judgment delivered on 8 May 2012

Before Egonda-Ntende CJ, Burhan, Dodin JJ

EGONDA-NTENDE CJ:

This petition is brought by Mr Charles Alfred Paul Moulinie. He is the executor to the estate of the late Michel Paul Moulinie. Prior to his death the deceased was the owner of the following land. Parcel no PR13 situated at Cote D'Or on Praslin. This was approximately 76.5 acres of land. Parcel no V5320 situated at Les Mamelles, approximately 0.97 acres of land. Parcel no V5317 situated at Les Mamelles. Parcel no V5318 situated at Les Mamelles and lastly parcel no V5319 on Albert Street in Victoria. The Government of Seychelles on 1 September 1980 and on 10 December 1987 acquired the said properties compulsorily.

The late Paul Moulinie made an application under section 14(1) of Part 3 of Schedule 7 of the Constitution to exercise his constitutional rights of redress thereunder. The late Paul Moulinie and now his executor Charles Alfred Paul Moulinie negotiated with the Government for the return of all the properties that had been compulsorily acquired but had not been developed and negotiated for monetary compensation for land that had been sold to third parties. The negotiations were protracted and only ended quite recently with an offer from the Government of Seychelles to the petitioner of R 4,800,000 as total compensation for all the properties compulsorily acquired less the sum that was initially paid.

The petitioner rejected the Government position and asserts that it has a right under section 14(1)(a) of Schedule 7 Part 3 of the Constitution to the return of all land that has not been developed by the Government and there was no government plan to develop it. The petitioner contends that the failure of the Government to transfer this land back to the petitioner is a contravention of the petitioner's constitutional rights under the said provisions. The petitioner therefore claims a declaration that the decision of the Government not to return the said land to the petitioner is a violation of the petitioner's constitutional right.

The petitioner prays that the respondent be ordered to transfer parcels number V5318, V5319 and V5320 and unsold portions of PR13 within one month of the judgment of this court and failing which the court should order the Land Registrar to effect a transfer under section 75 of the Land Registration Act.

The petitioner prays that this court orders the respondent to pay to the petitioner full monetary compensation for the properties V5317 and part of PR13 sold by the Government and for the loss and damage suffered by the petitioner.

The petitioner prays to this court to order the respondent to pay to the petitioner interest at the rate of 4% compound interest per annum on all monetary compensation with effect from January 1995.

In reply to the petition the respondent asserts that notwithstanding that Mr Paul Moulinie has been compensated under the Land Acquisition Act 1977 in good faith and within the spirit of the Constitution, respondent no 1 accepted the application made on behalf of Mr Moulinie for review. The respondents accept that negotiations have been ongoing in good faith with a view to providing monetary compensation to the petitioner in respect of all properties as at June 1993 in terms of section 14(2) of Part 3, Schedule 7 to the Constitution.

The respondents contend that the petitioner was not deprived of the said properties for 28 years as claimed, since compensation had been paid to Mr Moulinie for the properties in question. In answer to the claim for return of the properties, the respondents state that as of the date of receipt of the application made under paragraph 2 of the petition, the properties could not be transferred back to the petitioner as they were developed and there were plans to continue developing those that were partly developed.

It is claimed that parcel V5317 was subdivided into parcels V7121, V7122 and V7123 for subsequent sale to housing applicants. Property V5318 was being used for accommodation purposes for government expatriate workers. Property V5319 was transferred to the Seychelles Industrial Development Corporation in 1989 for a redevelopment project. And property V5320 was used as a multipurpose court for use by the community. Property PR13 was subdivided and part of it was transferred to the Seychelles Housing Development Company for housing development.

The respondents contend that the petitioner has a right to full monetary compensation for the acquired properties, calculated at the market value of the said properties as at June 1993 when the Constitution came into force less the sum of R1.95 million paid under the Land Acquisition Act 1977 in respect of the said properties. The respondents therefore ask this court to declare that the petitioner is entitled to monetary compensation calculated at the market value of the properties as at June 1993 less the sum paid to him.

The facts of this case are largely not in dispute. I start with PR13, the land that is found on the island of Praslin. Counsel for the respondent Ms Alexandra Madeleine conceded in effect the plaintiff's claim and abandoned the position that had been set out in the reply to the petition. She indicated to the court that the respondents are willing and ready to give back the undeveloped remainder of PR13 and are willing to compensate

the petitioner in respect of the plots of land that were carved out of PR13 and sold to third parties. As this is conceded I would have no hesitation in entering judgment for the petitioner in those terms as conceded by counsel for the respondents.

The rest of the claim remains with regard to parcel V5317, parcel V5318, parcel V5319 and parcel V5320. It is not contested that the land in question belongs to the petitioner and that they were compulsorily acquired by the Government. Parcel V5317 has been subdivided into three plots V7121, V7122 and V7123. The respondents contend that this was done for subsequent sale to housing applicants. However, it has not been disclosed whether at this time or at the time this petition was lodged sale to housing applicants had or has occurred. Notwithstanding the foregoing the petitioner claims only its value as he believes it has been transferred to third parties. I shall act on the premise that this property has been transferred to third parties.

Parcel V5318 was a developed property with a block of flats at the time of compulsory acquisition. The government has always used it and continues to use it now for accommodation purposes for government expatriate workers. Parcel V5319 - it is contended for the respondents that it was transferred to the Seychelles Industrial Development Corporation in 1989 for redevelopment. It has been contended for the petitioner that actually the Seychelles Industrial Development Corporation or rather its successor in title later re-conveyed this property back to the Government. A certified copy of the transfer was availed to the court during the hearing. Mr Boule submitted that this was evidence of the bad faith on the part of the Government as it did so merely to attempt and put this property beyond the reach of the petitioner.

The transfer is dated 23 July 2008 and there is certification by the Registrar General of the said transfer. It is clear that at the time this petition was presented this parcel had been transferred to and was in the name of the Government. Clearly the affidavit of the respondent on this matter at the very least failed to convey to the Court the actual status quo by failing to disclose the subsequent transfer back to the Government.

Parcel V5320 remains undeveloped and it is contended that it is used as a multipurpose court for use by the community.

At the hearing of this petition, counsel for the petitioner Mr Boule submitted that the law in this jurisdiction is very clear and that it is now governed by the Court of Appeal decision in the case of *John Atkinson v Government of Seychelles and Attorney-General* SCA 1 of 2007. He submitted that the Court of Appeal has held that on receipt of an application under section 14 of Part 3 of Schedule 7 of the Constitution, the Government is obliged to negotiate with a view to returning the land in question where such land has not been developed and where it has no plans to develop it. He submitted that in the current instance, the Government has not developed the land in issue and therefore prayed that it be ordered to transfer the land in question back to the petitioner.

Counsel for the respondent submitted that the case of *Atkinson v Government of Seychelles* does not apply in this particular instance. She submitted that what the petitioner is entitled to with regard to the land on Mahe is a claim for compensation and that the Government is willing to compensate the petitioner the full market value of the said land less the amount paid to the petitioner as compensation earlier on.

At the commencement of my discussion of this matter I must bring into view section 14 of Part 3 of Schedule 7 of the Constitution.

(1) The State undertakes to continue to consider all applications made during the period of 12 months from the date of coming into force of this Constitution by a person whose land was compulsory acquired under the Lands Acquisition Act 1977 during the period starting June 1977 and ending on the date of coming into force of this Constitution and to negotiate in good faith with the person with a view to –

(a) where on the date of receipt of the application the land had not been developed or there is no government plan to develop it, transferring back the land to the person.

(b) where there is a government plan to develop the land and the person from whom the land was acquired satisfies the government that the person will implement the plan or a similar plan transferring the land back to the person.

(c) where the land cannot be transferred back under sub paragraph (a) or sub paragraph (b)—

(i) As full compensation for the land acquired transferring to the person another parcel of land of corresponding value to the land acquired;

(ii) Paying the person full monetary compensation for the land acquired; or

(iii) As full compensation for the land acquired devising a scheme of combination combining items (i) and items (ii) up to the value of the land acquired.

(2) For the purposes of sub paragraph (1) the value of the land acquired shall be the market value of the land at the time of coming into force of this Constitution or such other value as may be agreed to between the Government and the person whose land has been acquired.

(3) No interest on compensation paid under this paragraph shall be due in respect of the said land acquired but government may in special circumstances pay such interest as it think just in circumstances.

(4) Where the person eligible to make an application or to receive compensation under this paragraph is dead the application may be made or the compensation may be paid to the legal representative of that person.

It appears to me that it is clear that the duty of the Government, following the decision of the Court of Appeal in *Atkinson v Government of Seychelles*, where the Government is in receipt of an application for land that has not been developed or where there is no government plan to develop it, is to transfer that land back to the person it was acquired from.

The Court of Appeal in *Atkinson v Government of Seychelles* has stated -

[12] First, it is trite law that in all situations where a statutory or constitutional provision gives any discretion as “may” “as the State deems fit” “As the State thinks fit” “decide in its best judgment”. As much as we read paragraph 14(1) (a), we find no such or similar language used. Second, we do not know how the Court of Appeal read that the paragraph created “primary obligations” and “Secondary obligations.” These terms have not been used. As much as we try to find the reasoning behind such re writing of the text, we find none. The text is plain. It is a canon of interpretation that where the text is plain full effect should be given to the intention of the legislator. The clear and plain language of paragraph 14(1)(a) did not lead to any absurdity and required no judicial acrobatics but the simple application.

[13] Rather than reading in the section any discretionary power, we read, instead, the very ominous and telling term “undertakes” in the very first three words: “The State undertakes to continue to consider, ...to negotiate in good faith...with a view to transferring.”

Secondly, if there is a government plan to develop that land then it appears that by virtue of section 14(1)(b), the Government is obliged to present the person it acquired the land from with the Government plan for that person to be able to satisfy the Government that he is able and willing to implement that plan or he has a similar plan, and transfer that land back to that person.

The third option under paragraph (c) is where land cannot be transferred back. The Government is obliged to offer, as full compensation for the land acquired, another parcel of land of corresponding value to that person. If that is not possible then the Government may consider, as a fourth option, full monetary compensation for the land acquired or full compensation for the land acquired devising a scheme of compensation that combines (c)(i) and (c)(ii). What the Government has done in this instance is to ignore options (1), (2) and (3), which it was obliged to consider first in priority before jumping to option 4 to tell the applicant that he is entitled to only monetary compensation.

The affidavit of Mr Raymond F Chang Tave and in particular paragraph 10 contends that this land cannot be returned because it is developed. The question that must be determined is what is the development referred to in section 14?

This question was considered in *Lise du Boil v Government of Seychelles and others* Constitutional Case No 5 of 1996. The Constitutional Court held that as long as the property was developed it was not available for return to the original owner regardless of the person who had developed the property.

My view is somewhat different. Certainly the section does not identify who carried out the development. It just states, ‘where on the date of the receipt of the application the *land has not been developed* or there is no government plan to develop it.’ [Emphasis is mine.] However the words ‘has not been developed’ can only be meant to refer to development carried out subsequent to the compulsory acquisition and not development carried out by the former owner prior to compulsory acquisition. The words import some

kind of action carried out in the period prior to the application for return being submitted and I would infer by necessary implication the start date for that period must be the date of acquisition. If the meaning intended is simply whether a property is developed or not it would have been sufficient to state, "Where on the date of the receipt of the application the land *is* developed, or..." There would be no need to use the expression 'has not been developed' which imports action in the immediate past.

It appears to me that the objective of these provisions was to address an injustice that had occurred in the past. The intent of the constituent assembly must have been to provide for a return of all land which had remained in the same state as at the time of the compulsory acquisition, hence the expression, 'has not been developed.'

With respect I would depart from the reasoning and holding of this court in *Lise du Boil v Government of Seychelles and others* Constitutional Case No. 5 of 1996 and would hold that where land has not been developed between the date of compulsory acquisition and date of receipt of the application for return under section 14(1)(a), such land must be returned to the former owner. Property V5318 was not developed between the date of compulsory acquisition and at the time of receipt of the application for return. It is available therefore for return to the former owner.

Property V5319 may have been transferred to the Seychelles Industrial Development Corporation in 1989 but it was re-conveyed back to the Government in 2008. In any case, once it is in government ownership then the Government is in a position to return it. No evidence has been adduced that this property has been developed or in any case was developed at the time of receipt of the application of the petitioner.

Property V5320 was used as a multi-purpose court for use by the community. Use is not one of the conditions for non-return. Development is the condition and clearly no evidence has been shown that there has been any development of this property. Property V5320 remains available for return.

Save for the developed land, the respondents have not assigned any reason why it is not possible to return back parcels V5318, V5319 and V5320, other than the claim that they are willing to pay full monetary compensation and that is the obligation of the State. Clearly that is not the law. The respondents had to show that the options which are in priority, in my view, were not available in this particular instance, leaving it with no choice but compensation by payment of monetary value of the properties in question.

The Government was obliged to consider the option of return of undeveloped land which the Government had plans to develop. The Government had to make known to the applicant the Government plan or plans for development, and it would be up to the applicant to satisfy the Government that he could effect that plan or plans; or the applicant had a similar plan. The Government did not do so.

Thirdly in event that the land was not available for return on account of being developed, the Government had the option to then consider compensation by

transferring to the petitioner land of a corresponding value. In event of all the foregoing not being available or possible, the Government would then have to offer either a combination of monetary compensation and return of some land or monetary compensation alone. The Government did not do so save to offer monetary compensation. This was in breach of the petitioner's constitutional rights under section 14, Part 3 of Schedule 7 of the Constitution.

In the result I am satisfied that the petitioner has made out his case and I would order the return of properties V5318, V5319 and V5320 to the petitioner.

The petitioner has claimed the value of parcel V5317 as having been sold to another person and has claimed R 600,000. The petitioner has further claimed a sum of R 9 million for part of Parcel PR13 that was sold, bringing the total claim for monetary compensation to R 9,600,000. The question of monetary value is one that must be proved by evidence. What is the evidence before us?

There is an affidavit by Mr Boule in which he claims that those sums are the value of the said piece of land. He does not indicate in his affidavit that he instructed a land valuer to value the land who has come up with that value. Nor has he attached to his affidavit a copy of the valuation report that supports such claim. Attached to his affidavit are a series of correspondence between the Government and his clients. Subsequently the petitioner filed a document or a batch of documents on 30 January 2012 and stated that the petitioner will rely on certain documents at the hearing of the application. That document contains an apparent report by a Quantity Surveyor which among other things purports to give the value of the property in question in the manner or in the sums that the plaintiff has claimed.

Firstly this is not the proper way of adducing evidence. Evidence must be adduced either by affidavit or oral testimony. It is not enough to put a batch of documents on the court file and be content that you have proved your point. I am satisfied that the petitioner has failed to prove by way of evidence the value of the land in question. The claim for R 9.6 million is unsupported by evidence on record.

The plaintiff has also claimed loss of rent for buildings in Victoria on parcel V5319 for 15 years from 1995 to 2009 at R 15,000 per month up to a total of R 2,700,000 and at paragraph 12(ii) he has claimed rent for 6 blocks of flats for 15 years for a total of R 3,780,000. He has adjusted the said claim by 100% on account of inflation doubling the claim to R 12,960,000.

This court has the jurisdiction to consider loss and damages a petitioner may have suffered and to be able to grant redress but the loss and damages claimed must not only be specifically claimed. The loss and damage must be specifically proved. A claimant cannot just throw heads of damage to the court and say 'This is what I have lost. Give it to me'. How does he for instance arrive at a claim of R 15,000 per month or R 20,000? Was that the market rate? Is that the going rate in that area? And has it

been so since 1995 to 2009 for 15 years unchanged? In my view the petitioner has failed to adduce evidence to support this claim. The claim on that account fails.

The petitioner claimed interest on all monetary compensation at the rate of 4% per annum from 1995. This is contrary to section 14(3) of Schedule 7 of the Constitution which provides -

No interest on compensation paid under this paragraph shall be due in respect of the land acquired but Government may, in special circumstances, pay such interest as it thinks just in the circumstances.

This court cannot order the payment of interest in light of the foregoing provisions of the law. However given the delay in resolving this matter, part of which delay can only lie with the Government, the Government may well consider doing so, as it thinks just.

I would therefore enter judgment for the petitioner as follows:

- (a) the return of the remainder of PR13 to the petitioner and order compensation for the portions that have been transferred to third parties;
- (b) order the return of parcels V5318, V5319 and V5320 to the petitioner;
- (c) order monetary compensation for parcel V5317 to be agreed to by all the parties or in event of disagreement the parties would appoint one valuer each and the two valuers would appoint a third to chair the team and the three of them would asses by majority vote the value of the property in question;
- (d) monetary compensation shall be at the market rate as at the time of the coming into force of the Constitution or such other sum as the parties may agree upon;
- (e) dismiss the claim for interest; and
- (f) dismiss the claim for loss and damages.

As Burhan and Dodin JJ agree, judgment is entered for the petitioner as set out above with costs.

DODIN J:

I have had the opportunity to read the draft judgment of the Chief Justice and for this reason I shall not repeat in my judgment the pleadings, facts and submissions which have been extensively set out in the Chief Justice's judgment.

I also concur with the judgment of the Chief Justice for the reasons contained in my judgment.

I reproduce here two relevant provisions of the Constitution, namely article 26 and paragraph 14 of Part 3 of Schedule 7, both of which this petition refers to.

Article 26 of the Constitution states:

- (1) Every person has a right to property and for the purpose of this Article this right includes the right to acquire, own, peacefully enjoy and dispose of property either individually or in association with others.
- (2) The exercise of the right under clause (1) may be subject to such limitations as may be prescribed by law and necessary in a democratic society –
 - (a) in the public interest;
 - (b) for the enforcement of an order or judgment of a court in civil or criminal proceedings;
 - (c) in satisfaction of any penalty, tax, rate, duty or due;
 - (d) in the case of property reasonably suspected of being acquired by the proceeds of drug trafficking or serious crime;
 - (e) in respect of animals found trespassing or straying;
 - (f) in consequence of a law with respect to limitation of actions or acquisitive prescription;
 - (g) with respect to property of citizens of a country at war with Seychelles;
 - (h) with regard to the administration of the property of persons adjudged bankrupt or of persons who have died or of persons under legal incapacity; or
 - (i) for vesting in the Republic of the ownership of underground water or unextracted oil or minerals of any kind or description.
- (3) A law shall not provide for the compulsory acquisition or taking of possession of any property by the state unless-
 - (a) reasonable notice of the intention to compulsorily acquire or take possession of the property and of the purpose of the intended acquisition or taking of possession are given to persons having interest or right over the property;
 - (b) the compulsory acquisition or taking of possession is necessary in the public interest for the development or utilisation of the property to promote public welfare or benefit or for public defence, safety, order, morality or health or for town and country planning;
 - (c) there is reasonable justification for causing any hardship that may result to any person who has an interest in or over the property;
 - (d) the state pays prompt and full compensation for the property;
 - (e) any person who has interest or right over the property has a right access to the Supreme Court whether direct or an appeal from any other authority for the determination of the interest or right, the legality of acquisition or taking of possession of the property, the amount of compensation payable to the person and for the purpose of obtaining prompt payment of compensation.
- (4) Where the property acquired by the State under this Article is not used, within a reasonable time, for the purpose for which it was acquired, the state shall give, to the person who owned it immediately before the acquisition of the property, an option to buy the property.
- (5) A law imposing any restriction on the acquisition or disposal of property by a person who is not a citizen of Seychelles shall not be held to be inconsistent with clause (1).

Paragraph 14 of Part 3 of Schedule 7 of the Constitution states:

(1) The State undertakes to continue to consider all applications made during the period of 12 months from the date of coming into force of this Constitution by a person whose land was compulsory acquired under the Lands Acquisition Act 1977 during the period starting June 1977 and ending on the date of coming into force of this Constitution and to negotiate in good faith with the person with a view to –

- (a) where on the date of receipt of the application the land had not been developed or there is no government plan to develop it, transferring back the land to the person.
- (b) where there is a government plan to develop the land and the person from whom the land was acquired satisfies the government that the person will implement the plan or a similar plan transferring the land back to the person.
- (c) where the land cannot be transferred back under sub paragraph (a) or sub paragraph (b)—
 - (i) As full compensation for the land acquired transferring to the person another parcel of land of corresponding value to the land acquired;
 - (ii) Paying the person full monetary compensation for the land acquired; or
 - (iii) As full compensation for the land acquired devising a scheme of combination combining items (i) and items (ii) up to the value of the land acquired.

(2) For the purposes of sub paragraph (1) the value of the land acquired shall be the market value of the land at the time of coming into force of this Constitution or such other value as may be agreed to between the Government and the person whose land has been acquired.

(3) No interest on compensation paid under this paragraph shall be due in respect of the said land acquired but government may in special circumstances pay such interest as it think just in circumstances.

(4) Where the person eligible to make an application or to receive compensation under this paragraph is dead the application may be made or the compensation may be paid to the legal representative of that person.

It is not in dispute that the acquisition of the petitioner's properties and the negotiations for their return or for compensation fall within the ambit of the provisions of paragraph 14 of Part 3 of Schedule 7 of the Constitution. Counsel for the respondents has indeed admitted that the first respondent is ready and willing to return the land that has not been developed and that negotiations in good faith have been ongoing with a view to settle the matter in accordance with the provisions of the Constitution. However, counsel for the respondents is restricting the concession to which land the first respondent is willing to return to only a portion of parcel PR13 and maintains that the other parcels, namely, V5317, V5318, V5319 and V5320 should not be returned and compensation calculated at the 1993 rate should be paid.

With regard to parcel PR13, there is agreement that the undeveloped portion should be returned and appropriate compensation would be paid for the portion that cannot be returned. As for parcel V5317, it has been virtually agreed by both sides that it cannot

be returned and compensation should be paid. The only disagreement with regards to these two parcels is the rate at which compensation should be paid.

Sub-paragraph 2 of paragraph 14 of Part 3 of Schedule 7 states that for the purpose of calculating compensation –

the value of the land acquired shall be the market value of the land at the time of coming into force of this Constitution or such other value as may be agreed to between the Government and the person whose land has been acquired.

The problem here is what happens when one side maintains the first limb of the provision should apply and the other side maintains the second limb of this provision should apply. Should the first limb apply, then compensation should be calculated at the value of the land at the coming into force of the Constitution in 1993 as argued by counsel for the respondents. On the other hand counsel for the petitioner argued that compensation should be calculated at today's market value.

Whilst this Court is being called upon to decide on the amount of compensation, neither party has brought reliable evidence to prove to this court why compensation should be paid on the basis of their respective arguments. Indeed this court has been left in ignorance of the process of the negotiations conducted prior to the petitioner filing this petition, which could have assisted this court in determining whether in the circumstances of this case it would be just and fair to apply the first or the second limb of sub-paragraph 2. A careful reading of sub-paragraph 2 of paragraph 14 of Part 3 of Schedule 7 in my view first and foremost place the market value of the property to be calculated as “shall be the market value of the land at the time of coming into force of this Constitution”. In my considered view this should be the basis of the calculation of compensation unless otherwise agreed. In the absence of an alternative agreement, I must conclude that compensation for the above mentioned properties should be calculated as per its 1993 market value.

With regard to parcels V5318, V5319 and V5320, the submission of the respondent is that these parcels should not be returned because they have been developed or have been earmarked for future development. However, counsel for the respondent had great difficulty to define what type of development had taken place on these properties since they were acquired by the first respondent. At most, counsel argued that the first respondent has used one parcel which already had buildings on it to house expatriates and had transferred it back to the first respondent.

The term “development” is often used in the following combinations which are purely economic development, social or socio-economic development, the development of the region, town, village or city. In each case, development generally refers to progressive changes primarily in the economic, social or physical spheres. If the change is quantitative, it usually refers to economic growth. A qualitative change refers usually to the structural changes or changes in social status. Moreover, the social characteristics of development have long been full performance, assessed by the degree of improvement of a region.

Development always has a direction determined by the purpose or purposes of the system. If this direction is positive, then we speak of progress, if negative, we would speak of regression, or degradation. In other words, the nature of development always involves a certain goal or several goals that must have been met for the benefit of the community or the targeted group.

It is my considered opinion that holding onto a property without doing anything extra to improve or change it in terms of the exceptions allowed by article 26 does not amount to development in the true sense of the meaning of the provisions of the Constitution. I therefore cannot subscribe to the argument of counsel for the respondents that by simply transferring land or using it as it was acquired for certain purposes amount to development.

In applying the above reasoning it is evident that parcel V5318 has only been used for accommodation purposes for expatriates and nothing more has been carried out with respect to that plot of land. Parcel V5319 was transferred to SIDEC and then transferred back to the first respondent without any activity having been carried out by the first respondent or SIDEC which can qualify as development. Parcel V5320 was used as a multi-purpose court for the community but nothing more. The petitioner is not averse to taking back the said parcel as it is and I am of the opinion that the multi-purpose court would not hamper any real future development of the parcel and has not significantly changed the nature of the property in terms of real development as anticipated by the provisions of the Constitution.

In such circumstances, I must conclude that with regard to parcels V5318, V5319 and V5320, the proper option that should be taken by the first respondent should be to return the properties to the petitioner. The issue of payment of compensation in lieu should not arise in respect of these parcels as compensation should only be considered if it is not possible to return acquired land due to the nature and extent of development which has been carried out on the land since acquisition.

I therefore enter judgment for the petitioner with the following orders:

- (a) The first respondent shall return the remainder of parcel PR13 to the petitioner and shall pay compensation for the portions that have been transferred to third parties at its 1993 market value.
- (b) Parcels V5318, V5319 and V5320 shall be returned to the petitioner.
- (c) That monetary compensation for parcel V5317 shall be agreed to by all the parties or in the event of disagreement the parties would appoint one valuer each and the two valuers would appoint a third to chair the team and the three of them would assess by majority vote the value of the property in question at its 1993 market value.
- (d) The claim for interest by the petitioner is dismissed.
- (e) The claim for loss and damages by the petitioner is dismissed.
- (f) Costs are awarded to the petitioner.

