NMLS

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO: 96/2001

BEFORE: **THE HON MR. JUSTICE FORTE, PRESIDENT**
THE HON MR. JUSTICE HARRISON, J.A.
THE HON MR. JUSTICE WALKER, J.A.

BETWEEN: **RIVA RIDGE LTD** **APPELLANTS**
VISCOL SERVICES LTD

AND **THE KINGSTON & St ANDREW CORPORATION** **RESPONDENTS**
Registrar of Titles (Intervenor)

Ransford Braham & Matthew Hogart instructed by Livingston, Alexander & Levy for appellants

Donald Scharschmidt, Q.C., Rose Bennett & Crislyn Beecher-Bravo for 1st respondent

Nicole Foster-Pusey & Annaliesa Lindsay instructed by Director of State Proceedings for intervenor

February 3, 4, 5, 2003 & February 26, 2004

HARRISON, J.A:

This is an appeal against the judgment of Brown, J (Ag.) on June 1, 2001 when he found in favour of respondent, as follows:

> "1. It is declared that the Plaintiff (K.S.A.C.) is the owner of all that parcel of land known as Riva Way and extending from Ridge Way Terrace to Lot 12 Barbican Heights and being part of land comprised on Certificate of Title

Registered at Volume 1180 Folio 208 of the Register Book of Titles and that the said Lot 28A is part of the reserved road, Riva Way as shown as proposal Road 3.

2. It is hereby ordered:

(a) that Lot 28A be removed from the deposit plan.

(b) that the K.S.A.C. surrender the Registered Title Volume 1190 Folio 837 to the Registrar of Titles for the plan attached to the Title to be corrected to show Riva Way extending to Lot 12 Barbican Heights.

(c) that the cost incurred in rectifying the plan and title to be borne by the defendants.

(d) costs to the K.S.A.C. to be agreed or taxed".

The Kingston & St Andrew Corporation (" the KSAC") was contending that lot 28A on the deposited plan of Riva Ridge is a part of roadway No. 3, Riva Way which should be transferred to the respondent.

We heard the arguments in the appeal, dismissed the appeal, affirmed the order and declaration of the learned trial judge and ordered that the costs of the appeal be paid to the respondent KSAC to be agreed or taxed. No order for costs of the appeal was made in respect of the respondent/intervenor. These are our reasons in writing.

The relevant facts are that the first appellant Riva Ridge Ltd ("Riva Ridge") on September 21, 1982 applied to the respondent, "the KSAC" for subdivision approval as registered proprietor to develop lands comprised in Volume 1180 Folios 207 and 208 of the Register Book of Titles at Barbican Heights in the parish of St Andrew, ("the development lands"). A subdivision plan, prepared by Ronald Haddad, commissioned land surveyor, accompanied the application.

On November 16, 1982 the KSAC granted subdivision approval for the said development, subject to the conditions of approval. The significant conditions were, clauses (d) and(z)(ii)(1). They are:

> "(d) That the title for the roadway(s) to be handed over to the corporation be prepared from the deposited plan in the Titles Office and plan to be attached to title, and that the title to the roadway in the subdivision be transferred to the Corporation as soon as the Corporation issues to the subdivider a certificate that such roadway(s) has/have been satisfactorily completed"
>
> "(z) ...
>
> (ii). That unless the Corporation shall in any particular case otherwise determine no lot shall be transferred until the Town Clerk has certified to the Registrar of Titles that:
>
> (1) The road on which the lot is situated has been taken by the Kingston and Saint Andrew Corporation and that a transfer of such a road to the Kingston and Saint Andrew Corporation has been lodged for registration."

A detailed subdivision plan was prepared by the said commissioned land surveyor Haddad in 1983 on behalf of Riva Ridge and submitted to the Department of Survey. There the plan was received and stamped on January 27, 1984 and checked and given the examination number 181067. This plan was deposited in the office of the Registrar of Titles on March 2, 1984 and numbered DP 7215, ("the deposited plan"). However, the deposited plan differed from the plan approved by the KSAC in that the former included an additional lot, No. 28A, drawn onto roadway No. 3 Riva Way, and occupying twenty feet of the length of the said roadway.

The Registrar of Titles previously had in her possession a copy of the subdivision plan approved by the KSAC on November 16, 1982 along with the relevant resolution of the Council. Accordingly, on June 18, 1984 the Registrar lodged a caveat No. 96664 "forbidding all dealings with the land until condition (ii) ... has been complied with."

By letter dated December 3, 1984 the KSAC advised the Registrar of Titles that it had no objection to the issuing of transfers of certificates of title "... in respect of lots fronting on roadways in the ... subdivision. On December 3, 1984 the Registrar lifted the caveat No. 96664.

By letter dated December 8, 1989 the Government Town Planner also advised the Registrar of Titles that he consented to the transfer of titles for the lots adjoining the roadway:

> "Pursuant to section 4A of the Local Improvements (Amendment) Act 1987, and in accordance with condition (z) of the approved sub division".

A notation dated September 21, 1994 on the parent title at Volume 1180 Folio 208, at the Registrar of Titles office reads:

> "Lot 28A to be transferred to KSAC only ... condition (d) approval".

The roadways in the subdivisions, namely, Farringdon Heights, Ridgeway Terrace, Riva Way, Farringdon Way, Amber Way, and Pearl Way were all transferred to the KSAC on May 20, 1986 and titles issued therefor and registered at Volume 1199 Folio 837 of the Register Book of Titles.

However, in respect of roadway No. 3, Riva Way, a portion only of that roadway was transferred to the KSAC. This was due to the fact that, that roadway on the deposited plan terminates on a lot 28A, instead of on the boundary of the subdivision, as shown on the plan approved by the KSAC.

On June 2, 1992 the KSAC approved the subdivision of a lot adjoining the Riva Ridge development lands, namely, Lot 12B Barbican Heights, registered at Volume 1052 Folio 663, and advised the

Registrar of Titles accordingly by letter dated September 26, 1994. The KSAC further stated, in the said letter that the entrance to Lot 12B was by way of the road reservation, roadway 3, Riva Way in the development lands. That entrance was then occupied by Lot 28A. The KSAC advised that Lot 28A should be transferred to the KSAC by the developers, Riva Ridge Ltd.

Previously, by transfer dated May 21, 1993 Riva Ridge attempted to transfer to a company called Viscol Limited Lot 28A, "... to be held as one holding with the lands comprised in Volume 1185 Folio 675 of the Register Book of Titles". This purported transfer was rejected by the Registrar of Titles, presumably on September 13, 1995 and the document endorsed:

> "Lot 28A to be transferred to KSAC for road improvement. See condition No. (d) ... approval".

By letter dated August 22, 1997 to Riva Ridge, the KSAC requested that the appellant take immediate action to transfer:

> "... Lot 28A which forms part of the road reservation ... to the KSAC".

The appellant refused to transfer the said lot 28A to the KSAC.

Consequently, an action was filed on October 8, 1998 against the appellants for a declaration that the KSAC is the true owner of Lot 28A part of Riva Way, and an injunction to restrain its transfer to

anyone other than the KSAC. The KSAC succeeded, resulting in the instant appeal.

The grounds of appeal were:

> "1. The learned trial judge failed to properly construe condition (d) of the conditions of approval which reads as follows:
>
> *"That the title for the roadway(s) to be handed over to the Corporation be prepared from the deposited plan in the Titles Office and plan to be attached to the title, and that the title to the roadway in the subdivision be transferred to the Corporation as soon as the Corporation issued to the sub divider a certificate that such roadway(s) has/have been satisfactorily completed".*
>
> In that the learned trial judge failed to take into account:
>
> (a) The fact that condition (d) required the title for the roadway to be prepared in accordance with the deposited plan in the Titles Office and plan attached to the title, and
> (b) the appellant in fact prepared the title for the roadway in accordance with the deposited plan and the plan attached to the Title.
>
> 2. The learned trial judge in construing the conditions of approval failed to apply the legal principle that the conditions of approval must be given their plain meaning without reference to extrinsic evidence or extrinsic material.
>
> 3. The learned trial judge failed to appreciate that condition (d) of the conditions of approval properly construed required the appellant to transfer the roadway and/or lot 28A to the respondent without compensation and in this regard the respondent acted

unreasonably and or ultra vires its powers which action rendered condition (d) void and of no effect.

4. To the extent that condition (d) required the transfer of the roadway and/or lot 28A to the respondent without compensation, condition (d) was contrary to section 18 of the Constitution of Jamaica and accordingly the said condition is void and of no effect.

5. The learned trial judge's reliance on the Parochial Roads Act is misconceived as the said Act does not enable the respondent to appropriate the appellant's land without compensation or to act unreasonably. Alternatively, the respondent did not rely on the said Act in its pleadings or as a part of its case and as a consequence the learned judge erred in basing his judgment on the said Act.

6. The learned trial judge failed to take into account the fact that the respondent in demanding possession of Lot 28A was acting in bad faith and/or an improper purpose in that the respondent was seeking possession of lot 28A for the benefit of a third party.

7. The learned trial judge failed to apply or appropriately apply the principles of estoppel having regard to the fact inter alia that the respondent authorized the transfer of lots fronting the roadways and thus represented that the roadways were transferred to the respondent to the respondents' satisfaction.

8. The learned trial judge wrongly and without any evidential basis therefor found that there was a well designed scheme by the appellant, as developer, and the land surveyor (Ronald Haddad) to hide lot 28A".

The development of land in Jamaica and the relevant procedure and effects thereof are governed by the provisions of the Local Improvements Act ("the Act"). Section 5(1) reads:

> "5.-(1) Every person shall, before laying out or sub-dividing land for the purpose of building thereon or for sale, deposit with the Council a map of such land; such map shall be drawn to such scale and shall set forth all such particulars as the Council may by regulations prescribe and especially shall exhibit, distinctly delineated, all streets and ways to be formed and laid out and also all lots into which the said land may be divided, marked with distinct numbers, and shall also show the areas and shall if required by the Council be declared to be accurate by a statutory declaration of a Commissioned Surveyor".

The Act empowers the KSAC to sanction the proposed plan for development, subject to any condition imposed by the KSAC. Section 8(1) reads:

> "Subject to the provisions of section 9, the Council shall on such deposit as prescribed in section 5 consider the said map, specifications, plans and sections and estimates and shall by resolution within a reasonable time after the receipt of the same, refuse to sanction or sanction subject to such conditions as they may by such resolution prescribe, the subdivision of the said land and the formation and laying out of the said streets and ways, and may approve of the map, specifications and estimates of the said street works or may alter or amend the same as to them may seem fit and may prescribe the time within which the said street works shall be completed".

The Act requires that all streets on the plan be specifically delineated. Section 5(2) inter alia reads:

> "(2) Every such person shall also deposit with the Council as respects each street and way as shown on the said map –
>
> (a) a specification showing how such street or way is to be constructed ... Such specifications shall, if the Council by regulations so prescribe, be accompanied by plans and sections giving such details and drawn to such scales as may be fixed in the regulations;
>
> (b) an estimate of the probable expenses of the street works being done.
>
> Such specifications, plans, sections and estimates shall comprise the particulars required by regulations made by the Council".

Section 11 of the Act empowers the KSAC to make regulations:

> "11. It shall be lawful for the Council to make regulations for carrying this Act into effect and any regulations so made shall when approved by the Minister have effect as if enacted in this Act".

Downer, J.A. in ***Garnett Palmer v Prince Golding et al*** SCCA No. 46/98 (unreported) delivered on December 20, 2000 said of section 11:

> "This section demonstrates that the conditions imposed by the Parish Council have statutory effect".

After the KSAC examines and sanctions by resolution, the sub-division plans submitted, it is required to report its decision to the

Minister (section 8(4)), who may confirm the KSAC's decision (section 8(5)) and inform the KSAC of his decision (section 8(7)).

Any subsequent amendment to the sanctioned plan or conditions has to be submitted to the KSAC for approval and reported to the Minister for confirmation.

> "The Act expressly imposes on a developer these obligations for the benefit of the public and the orderly development of the locality, and in particular, the health and well-being of the purchasers of lots in such a subdivision". [Harrison, J.A. in ***Palmer v Golding et al*** (supra)].

Criminal sanctions are accordingly imposed by section 12 of the Act, on anyone who contravenes its provisions. Section 12 provides:

> "12(f) Every person who shall commit a breach of any regulation made under this Act, shall be guilty of an offence against this Act and shall on summary conviction be liable to a penalty ..."

After the said subdivision plans have been approved and sanctioned, the surveyor is required to prepare a detailed plan of the approved subdivision for submission to the Registrar of Titles. Section 126 of the Registration of Titles Act reads:

> "126 Any proprietor sub-dividing any land under the operation of this Act for the purpose of selling the same in allotments shall deposit with the Registrar a map or diagram of such land exhibiting distinctly delineated all roads, streets, passages, thoroughfares, squares or reserves, appropriated or set apart for the use of purchasers and also all allotments into which the said land may be divided, marked with

> distinct marks or symbols, and showing the areas and declared to be accurate by a statutory declaration of a Commissioned Land Surveyor.
>
> Provided always that when any such land is situated within any portion of a parish to which the provisions of the Local Improvement Act and any enactment amending the same shall apply the proprietor shall deposit with the Registrar copies, certified by the Clerk of the Board under that Act, of the map deposited with the Board and the resolution of the Board sanctioning the subdivision, and no transfer or other instrument effecting a subdivision of any such land otherwise than in accordance with the sanction of the Board shall be registered".
>
> (Emphasis added)

Because section 126 of the Act requires that the map deposited with the Registrar of Titles:

> "exhibiting distinctly delineated all roads, streets ... appropriated or set apart for the use of purchasers ..."

and that whenever the Local Improvements Act applies, the proprietor shall deposit with the Registrar:

> "... copies, certified by the Clerk of the Board, of the map deposited with the Board and the resolution of the Board sanctioning the subdivision ..."

the deposited "map or diagram showing the areas ..." and which must be:

> "... declared to be accurate by a statutory declaration of a Commissioned Land Surveyor".

cannot differ from the plan approved by the KSAC with its conditions endorsed.

The conditions imposed by the KSAC in its resolution approving the subdivision must be reasonable, for the benefit of the said subdivision and within the ambit of the powers of the KSAC.

In the case of ***Pyx Granite Co. v Ministry of Housing*** [1958] 1 All E.R. 625, the Court of Appeal (England) held that conditions imposed by a Minister in granting development permission of land, restricting the particular user of land by a company which owned the land, were valid and within his powers to do so. The conditions were reasonable and imposed bona fide to secure safety and not for any ulterior motive. Lord Denning, at page 633 said:

> "The principles to be applied are not, I think, in doubt. Although the planning authorities are given very wide powers to impose "such conditions as they think fit", nevertheless the law says that those conditions, to be valid, must fairly and reasonably relate to the permitted development. The planning authority are not at liberty to use their powers for an ulterior object, however desirable that object may seem to them to be in the public interest."

and as to the option of the company seeking development permission also, at page 633, he said:

> "I see no reason to attribute to the Minister any ulterior object. He evidently takes the view that if the company wish to win and work stone from these quarries for some years to

> come, they should take steps to ensure there is as little nuisance as possible either from the blasting operations or from the ancillary operation of crushing and screening the stone; and that they should clear up the place when they have finished. There is nothing unfair or unreasonable about that. After all, if the company do not wish to accept the permission on those conditions, their remedy is not to work the quarry; but if they do continue to work the quarry, they can fairly be expected to comply with these conditions".

The development permission given by the planning authority are not unlike the provisions under the Local Improvements Act.

In ***Newbury District Council v Secretary of State for the Environment*** [1980] 1 All E.R. 731, their Lordships in the House of Lords, in reversing the Court of Appeal and approving the decision of the Secretary of State, held that a condition of planning permission imposed by the local planning authority that the appellant remove hangars used for storage purposes, was ultra vires, because it was extraneous to and did not relate to the permitted development. Their Lordships approved of the principle in the ***Pyx Granite*** case. Viscount Dilhorne referring to the validity of conditions imposed by planning authorities, at page 739 said:

> "... conditions imposed must be for a planning purpose and not for any ulterior one, and that they must fairly and reasonably relate to the development permitted. Also they must not be so unreasonable that no reasonable planning authority could have imposed them (***Associated Provincial Picture Houses Ltd***

v Wednesbury Corporation [1947] 2 All E.R. 680 [1948] 1 K.B. 223)".

In ***Hall & Co. Ltd. v Shoreham-by-Sea Urban District Council*** [1964] 1 W.L.R. 240, the Court of Appeal declared that a condition of development imposed by the local planning authority that the applicants construct at their own expense without compensation, whenever required by the authority to do so, an ancillary road along the entire frontage of their property for the use of the public for the benefit of users from roads on adjoining properties, was unreasonable, ultra vires and void. The reasoning in the ***Pyx Granite*** case was also relied on.

Public authorities have the statutory power to acquire land in private ownership for the purpose of road construction by way of compulsory purchase. On the other hand compulsory acquisition without compensation is in breach of section 18 of the Constitution of Jamaica, except in certain specific circumstances.

The main issues therefore are whether or not the conditions in clauses (d) and (z)(ii)(1) imposed by the KSAC amounted to a compulsory acquisition in breach of section 18 of the Constitution or were unreasonable and onerous, not relevant to the proposed development of Riva Ridge, but for some ulterior motive. In either case the said conditions would be ultra vires and void.

Grounds 1 and 2 may be considered together. The appellants argued that the learned trial judge should have construed the conditions giving the words their plain ordinary meaning. Had he done so he would not have held that the title to the roadway No. 3 was not prepared in accordance with the deposited plan.

The learned trial judge on page 39 of the record found that:

> "It was incumbent on Mr. Haddad to submit a survey plan to the Registrar with the lots and roadways as approved by the K.S.A.C. There was no requirement that survey plan was to be submitted to the K.S.A.C. They did not have any duty to check the plan to ensure that it conformed with their resolution.
>
> It was the duty of the K.S.A.C. that the road works were constructed to their satisfaction before they issued the letter of compliance to the Registrar of Titles. There was no complaint that the roads were otherwise than satisfactory. I find that there was no wrong doing on the part of the K.S.A.C. They acted properly in issuing the letter.
>
> They could not have known of the conspiracy between the developers and the Land Survey. (sic) It was a well concealed scheme to deceive the K.S.A.C. A check on the ground would not have alerted anyone that Lot 28A existed.
>
> The Registrar of Titles had a duty to check both the deposited plan and the approved plan to ensure that it was reflecting the Council Resolution. A careful check by the Registrar would have shown that Lot 28A was not approved by the Council. The Registrar was negligent in the discharge of her duty. She

> had no authority to issue a title for Lot 28A as it was not approved by the Council".

The learned trial judge was here declaring that the deposited plan exhibit 3 prepared by the commissioned land surveyor Haddad, should not differ from the subdivision plan, exhibit 2, approved by the KSAC. The latter issued its letter of compliance based on the appearance of the road Riva Way as observed on the ground. The learned trial judge was correct.

Section 126 of the Registration of Titles Act specifically required that the deposited plan be:

> "... declared to be accurate by a statutory declaration by Commissioned Land Surveyor".

In the instant case the plan approved by the KSAC exhibit 2, differed from the deposited plan exhibit 3, in several respects:

(1) (a) the plan approved, by the K.S.A.C. exhibit 2, comprised 73 lots for residential purposes and two lots Nos. 63 and 10A as open spaces, and 6 roads;

(b) the deposited plan comprised 74 lots plus Nos. 63 and 10A as open spaces, and 6 roads;

(2) (a) the plan approved did not include a lot No. 28A;

(b) the deposited plan included one additional lot No. 28A

(3) (a) proposed road No. 3 Riva Way terminated on the boundary of the subdivision, on the approved plan;

> (b) the said road, on the deposited plan was shortened by 20 ft in length, by the creation of lot 28A, measuring in acreage 600 square feet. (Emphasis added)

The endorsement by Ronald Haddad, commissioned land surveyor, on the deposited plan, namely:

> "The above figures circumscribed red represent survey into 76 lots and 6 roads of all those parcels of land part of Barbican Heights now called Riva Ridge ..." (Emphasis added)

is a clear admission by the said surveyor, that he was deliberately adding one additional lot contrary to what was approved by the KSAC. He could not therefore properly "... declare to be accurate ..." the said deposited plan exhibit 3, as required by the provisions of section 126 of the Registration of Titles Act, in view of his unauthorized increase in the lot count.

The appellant Riva Ridge was not without full knowledge of the deliberate breach of the provisions of the latter Act. One of its directors, Richard Khouri, was asked if he knew why Lot No 28A "was created". At page 63, he rather loftily said:

> "A. Several reasons;
> (a) one of the directors owned the corner lot 29. Mr. Vincens owns corner lot in a company called Viscol and so one reason is that it would enhance his lot 29 and as a director that was not a problem.
>
> (b) as directors we considered it prudent for the privacy of the

> development as it was going to be a family community".

This witness agreed that conditions imposed by the KSAC in respect of the development of Riva Ridge were endorsed on the approved plan, exhibit 2, that the said plan "outlined the number of lots ... (we) required", that no application was made to the KSAC to amend the number of lots and that "the roadways ... were transferred to the KSAC", but at page 67, boldly admitted:

> "We did changes and submitted the plan to the Registrar of Titles to get it approved and it came back and we proceeded to develop Riva Ridge".

The respondent's witness Llewelyn Leroy Allen a commissioned land surveyor, said in evidence, that the approved plan, exhibit 2, differs from the deposited plan, exhibit 3. He said that Riva Way, road 3, was approved "to take up all that portion of land going all the way up to the external registered boundary", but the deposited plan, exhibit 3, "carries a lot shown as 28A which is a part of the proposed road 3 on the approved subdivision". He said, further, at page 54:

> "The pre-checked plan has to be prepared in accordance with what was approved by K.S.A.C. with certain allowances. ... The areas in individual lots as well as measurements of individual lots are allowed to vary within certain distances. But what should not happen is for the number of lots to be changed. Changes in the lot count can be allowed but it must go back for approval to the authorities".

and at page 55:

> "... the number of lots in the deposited plan is in excess of what was approved by K.S.A.C. – and the excess Lot is Lot 28A ... It is an obvious irregularity ...".

Section 12 of the Local Improvements Act, which requires a developer to submit to the KSAC a plan of the proposed developments, provides criminal sanctions for a breach of any of the conditions of approval imposed under section 8. Section 12(e) and (f) read:

> "(e) every person who shall contravene or fail to comply with any condition prescribed by the Council under section 8 or 9; and
>
> (f) every person who shall commit a breach of any regulation made under this Act,
>
> shall be guilty of an offence against this Act and shall on summary conviction be liable to a penalty ..."

Because section 126 of the Registration of Titles Act, requires that:

> "... the proprietor shall deposit with the Registrar copies, certified by the Clerk of the Board under that Act, of the map deposited with the Board and the resolution of the Board sanctioning the subdivision ...",

the Registrar of Titles had both the deposited plan, exhibit 3, and the approved plan, exhibit 2. The section further imposed the prohibition that:

> "... no transfer or other instrument effecting a subdivision of any such land otherwise than in

> accordance with the sanction of the Board shall be registered".

Consequently, because the deposited plan, exhibit 3, with the addition of lot 28A, was clearly "... not in accordance with the sanction of the Board ...", the said deposited plan should not have been registered. It was therefore not enough for the Registrar, on September 21, 1994 when exhibit 3 was submitted, to endorse thereon that "lot 28A to be transferred to the KSAC only ..." No Lot 28A should have been added to plan exhibit 3. The Registrar should have rejected outright the said plan, exhibit 3.

Additionally, when the Registrar issued titles registered at Volume 1199 Folio 837 of the Register Book of Titles, in respect of the 6 roadways in the subdivision, because a portion only of Riva Way was transferred, that is, 20 ft less, terminating on lot 28A, it was in breach of section 126 of the Registration of Titles Act. That transfer was "... otherwise than in accordance with the sanction of the Board".

The appellant's arguments in support of grounds 1 and 2 are misconceived.

The deposited plan, exhibit 3, is required to be in conformity with the approved plan, exhibit 2, sanctioned by the KSAC. Exhibit 3 differed materially from exhibit 2, in respect of proposed road No. 3, Riva Ridge, in contravention of the requirements of section 126 of the Registration of Titles Act and in breach of section 8 of the Local

Improvements Act. The appellant is, in effect, relying on the partial transfer of road 3, Riva Ridge, and the deposit of a faulty, irregular plan, in breach of condition (d), in order to maintain that the said condition was satisfied. I agree with the submission of counsel for the respondent KSAC that the appellants' actions were illegal and that they should not be allowed by a court to enforce obligations arising out of illegal transactions, thereby benefiting from their misdeeds. The appellants were not in compliance with the conditions imposed by the KSAC. These grounds therefore fail.

Grounds 3, 4, and 5 may also be considered together. The appellants complain that the effect of compliance with condition (d) was an acquisition by the KSAC of the roadway, lot 28A without paying compensation therefor, which was unreasonable and therefore ultra vires and void and also in breach of section 18 of the Constitution of Jamaica.

As a general rule, planning authorities may grant permission for development, subject to conditions imposed, but such conditions must be reasonable and must relate to the development under consideration. Consequently, in ***Newbury District Council v Secretary of State*** (supra), the condition that the hangars used for storage be removed, was held to be ultra vires as it did not relate to the proposed development. Similarly, in ***Hall & Co. v Shoreham-by-***

Sea (supra), the condition that the appellants construct a road along the entire front of their proposed development for use by persons from other developments and by highway users, was unreasonable and ultra vires.

On the other hand, in the ***Pyx Granite*** case, the condition imposed by the Minister restricting certain mining activities, in granting development permission of lands was held to be reasonable, imposed bona fide and not for any ulterior motive. The condition was connected and related to the development lands.

Conditions statutorily imposed by a local municipal authority as an incidence of the grant of planning permission to lands, is prima facie within the powers of such authority and valid, as long as such conditions are necessary for the purpose of the development, are connected with such development and are generally for its benefit.

In the instant case, it was the developer Riva Ridge Ltd. which initially submitted its application for subdivision approval of the lands into 73 residential lots, 2 open area lots and 6 roads. The KSAC granted its application. Riva Ridge anticipated that the said roads would have been the responsibility of the KSAC for their upkeep, care and maintenance. The appellants' witness Richard Khouri, said that Riva Ridge Ltd. laid down and asphalted the said roads as a part of the

development, but once Riva Ridge Ltd. was finished with the development, the KSAC would be responsible for repairing the road.

Riva Ridge Ltd. proposed that the said 6 roads, be public roads, maintained and repaired by the KSAC. Riva Ridge Ltd. could have applied under section 36 of the Parochial Roads Act, that one or any of the said 6 roads be private roads. It did not so apply.

There was no compulsory acquisition of the said 6 roads, and in particular Riva Way, by the KSAC. Riva Ridge Ltd. voluntarily handed over the said roads to the KSAC in return for the KSAC assuming the burden of maintaining the said roads at the latter's own expense thereafter. Furthermore, that expense and burden is consideration from the KSAC. Consideration need not be adequate. It is incorrect therefore for the appellant to argue that there was no compensation by the KSAC for the reciprocal handing over of the titles for 6 roads by the appellant Riva Ridge Ltd., as a condition of the development approval.

Equally, it is incorrect to argue that the taking over of Riva Way was a compulsory acquisition in breach of section 18 of the Constitution of Jamaica. Section 18, inter alia, reads:

> "18.-(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 by or under the provisions of a law that -

> (a) prescribes the principles on which and the manner in which compensation therefor is to be determined and given; and
> (b) ...
>
> (3) Nothing in this section shall be construed as affecting the making or operation of any law ... for the reasonable restriction of the use of any property in the interests of safeguarding the interests of others or the protection of tenants, licensees or others having rights in or over such property." (Emphasis added)

Even assuming that there was a compulsory taking by the KSAC, which it was not, the exception in sub-section (3) of section 18 would have provided express authority for the imposition of condition (d) by the KSAC. The inhabitants of the residential lots in Riva Ridge, possessed of the rights of ingress and egress, would have been entitled to have their rights of user of the said roads safeguarded by the public authority, namely the KSAC.

There was no breach of the constitutional rights of the appellants which exist under section 18 of the Constitution.

It is further incorrect for the appellants to complain that the learned trial judge relied on the Parochial Roads Act in coming to his decision. The learned trial judge at page 37 of the record said:

> "Where the KSAC seeks to acquire land for the purpose of construction of new road or to alter existing road the land owner is entitled to be compensated as stipulated by Section 25, 26, 27, 28 and 29 of the Parochial Roads Act.

> However, in this case the KSAC was not seeking to construct a new road or to alter the existing roadway. It was merely requesting that the defendant transfer the roadway as laid out in the approved plan".

He then recited section 40 of the said Act, which places an obligation on the owner of land who lays out roadways to construct them "to the satisfaction of the Parish Council ..." and to "... pay all costs of and incident to the transfer of such roads, street and lanes to the Parish Council". The learned trial judge, far from implying that the KSAC was empowered by the said Act to "... appropriate the appellant's land without compensation ...", was acknowledging the KSAC's obligation to compensate the owner of land whenever it was the KSAC which required the said land "... for the construction of a new road or to alter existing road ...". The learned trial judge was making a proper contrast between the provisions of the Parochial Roads Act and those of the Local Improvements Act, thereby, by implication, expressly excluding any reliance on the former Act. In the circumstances, there is no merit in the arguments in support of these grounds.

Ground 6 is a complaint that the learned trial judge failed to consider that the KSAC acted in bad faith and with the ulterior motive to benefit a third party, namely, Douglas Vaz, by requesting that possession of lot 28A be delivered to the KSAC. This argument is also misconceived and serves to place the events entirely out of context.

The subdivision approval by the KSAC to the Riva Ridge development, was granted on November 16, 1982 with the conditions imposed then including the laying out of proposed road No. 3 Riva Way, to the external boundary of the development. All six roads on the approved plan, including Riva Way, ended on the external boundary of the said development. These were based on the proposals of the appellants, as defined in the subdivision plan, submitted. Adjacent to Riva Way, but outside of the development was another area of land, described as

> "Lot 12 Volume 1052 Folio 663 T.A. Parchment et ux 14 Begonia Drive, Kingston 6".

Neither condition (d) nor (z)(ii), concerned any activities on adjoining land, nor the benefiting of any third person. Lot 28A was not proposed nor did it exist. Douglas Vaz was unknown to the KSAC as far as the Riva Ridge development was concerned on November 16, 1982. Development approval was granted to Douglas Vaz almost ten years later on June 2, 1992 in respect of "Lot 12B Barbican Heights registered at Volume 1052 Folio 663". There was therefore no basis to allege bad faith or ulterior motive, in that regard.

The obligation of the appellants to hand over road No. 3 Riva Way, inclusive of the subsequently improperly and illegally created Lot 28A existed from November 16, 1982. Any request thereafter by the KSAC that the appellant honour its obligations, a condition of the

approval given, cannot therefore be categorized as being in bad faith or for an improper motive. This ground also fails.

Ground 7 complains that the respondent having authorized "the transfer of lots fronting the roadways" was representing that the said roadways had been transferred to the respondent's satisfaction and therefore the latter is estopped from asserting otherwise. In view of the reasons stated in respect of grounds 1 and 2, this ground also fails.

Ground 8. Counsel for the appellants complain that there was no evidence to support the finding of the learned trial judge that there was a well defined scheme by the developer of Riva Ridge and Commissioned Land Surveyor, Ronald Haddad to hide Lot 28A.

With reference to the evidence of the respondent's witness Llewelyn Allen's visit and observation of the roadways, at the Riva Ridge development, the learned trial judge at page 36 said:

> "He saw no physical boundary between Riva Way and lot 28A. It was a continuous paved carriageway. There were no surveyor's pegs or barriers between lot 28A and Riva Way.
>
> This was a well disguised scheme by the developer and the land surveyor to alter the roadway without seeking the KSAC's approval.
>
> It was impossible to detect the creation of lot 28A by merely visiting the roadway. It was constructed in accordance with approved plan.

> The KSAC quite properly concluded that the defendants had completed the infrastructural works satisfactorily and issued the letter to the Registrar of Titles. This could not be interpreted by either the Registrar of Titles or the defendant that the deposited plan was to the KSAC's satisfaction and approval".

Both the appellant, Riva Ridge Ltd., as developer, and Ronald Haddad, the commissioned land surveyor, were aware that the deposited plan submitted to the Director of Surveys and thereafter to the Registrar of Titles, and declared to be accurate by a statutory declaration of a commissioned land surveyor (section 126 of the Registration of Titles Act), must be in conformity with the plan approved by the KSAC. The appellant and the said commissioned land surveyor were also aware that the said detailed deposited plan, was not statutorily required to be submitted to the KSAC. The latter would therefore be unaware of the shortened road Riva Way, and the addition of another lot, No. 28A on the deposited plan. That faulty check balance in the procedure was exploited by the appellant, Riva Ridge Ltd., with the assistance of Ronald Haddad, the commissioned land surveyor, in order to"... enhance lot 29 ...", the property of one of the directors of the appellants. This was impermissible and unlawful. The learned trial judge was justified, on the evidence to find that "there was a well designed scheme ... to hide lot 28". This ground therefore fails.

It seems to me that there is a necessity for the amendment of the law to ensure that this apparent flaw in the system of land development be corrected. I would recommend that a developer be required to submit the pre-checked plan to the KSAC for certification that it does not differ from the approved plan, prior to its deposit with the Registrar of Titles. In addition, the Registrar of Titles should be required to reject outright a deposited plan which incorporates an increase (as in this case), in the number of lots approved. Had either action been employed, the situation in this case would not have arisen.

In all these circumstances, we came to the decision and made the orders stated.