**N Ltd v Income Tax**

**Division:** High Court of Kenya at Nairobi

**Date of judgment:** 17 September 1973

**Case Number:** 56/1972 (46/74)

**Before:** Trevelyan J

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*[1] Income Tax – Capital or income receipt – Profit on sale of plot originally bought for trading from –*

*Capital receipt – Change of intention immaterial.*

**Editor’s Summary**

The appellant was a distributor of petroleum and petroleum products and held exclusive rights in two provinces. It had never previously bought a plot and sold it. In 1966 the company acquired a plot so that a petrol station might be built on it from which Caltex products could be sold. Only after distribution rights had been refused to it did the appellant sell the plot, making a profit on the transaction. The respondent assessed the appellant to income tax contending that there was a change in intention which required the transaction to be considered as a revenue one, the plot having been developed before sale.

**Held –**

(i) the appellant bought the plot in order to trade from it;

( ii) on being unable to do so, the only prudent course was to sell;

(iii) the profit was not made from an adventure in the nature of trade (*Leeming v. Jones* (2) considered).

Appeal allowed.

**Cases referred to Judgment:**

(1) *Commissioner of Inland Revenue v. Livingston*, 11 T.C. 538.

(2) *Leeming v. Jones*, 15 T.C. 333.

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