SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA

KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË AKP-së
ŽALBENO VEĆE KAI

GSK-KPA-A-91/11

Prishtinë/Priština, 1 March 2012

In the proceedings of:

S.D.

Appellant

vs.

S.N.

Claimant/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Anne Kerber, Presiding Judge, Elka Ermenkova and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/83/2010 (case file registered at the KPA under No. KPA20030), dated 2 September 2010, after deliberation held on 1 March 2012, issues the following

JUDGMENT

1- **The appeal of S.D. is dismissed as impermissible.**

2- **The decision of the Kosovo Property Claims Commission KPCC/D/A/83/2010, dated 2 September 2010, as far as it regards the case registered under No. KPA20030, is confirmed.**

3- **The appellant has to pay the costs of the proceedings which are determined in the amount of € 42,50 (forty-two euro and fifty cents) within 15 (fifteen) days from the day the judgment is delivered or otherwise through compulsory execution.**

Procedural and factual background:

On 16 November 2006, S.N. filed a claim with the Kosovo Property Agency (KPA), seeking to be recognized as the (co-)owner of different parcels of land acquired as a gift from his mother and claiming repossession. He explained that the parcels registered in the possession list no. 21 of the Municipality of Podujevë/Podujevo had belonged to his mother, P.N., and that she had given them to him and his brother as a gift in 1984. The claimant declared that the land had been leased to the Agricultural Cooperative "JEDINSTVO" in Podujevë/Podujevo and that the property was lost on 12 June 1999 as a result of the circumstances in Kosovo in 1998/1999.

The KPA separated the original claim into several claims. After the separation, the original KPA file no. KPA20030 only contained the parcels nos. 351 and 352.

To support his claim, the claimant provided the KPA with the gift agreement signed on 27 June 1984 by P.N. as donor, the claimant and Z.N. as recipients of the gift. The agreement was certified by the Municipal Court of Podujevë/Podujevo and registered as O.br. 586/84. According to this agreement, the claimant and his

brother were given the property registered in possession list no. 21 in the cadastral zone of Llapashticë e Epërm/Lapaštice.

The gift agreement was verified by the KPA.

The KPA also found the possession list no. 21, issued by the United Nations on 2 October 2008 for the Municipality of Podujevë/Podujevo, cadastral zone Llapashticë e Epermë/Lapašice. This list showed amongst others that P.N. was the owner of two parcels at the place called "Lagja e Berqanve – Fshati", parcel no. 351, a 6th class meadow with a surface of 2 ar 80 m^2 , and parcel no. 352, a 6th class field with a surface of 22 ar 27 m^2.

On 18 May 2009, the KPA notification team went to the places where the claimed parcels allegedly were located and put up signs indicating that the property was subject to a claim and that interested parties should have filed their response within 30 days. The property (grassland and cultivated land) was found occupied. Therefore, the notification team tried to identify the person who was using the property but to no avail. Some local people did not know who occupied the land, others did not want to tell about the person. Again, on 12 April 2010, the notification team went to the place, and repeated the notification, setting up a poster on each of the parcels. This time, all of the property was found cultivated, the photos showed that it had been ploughed. Again the notification team tried to identify the occupant but was not able to do so. Later on in the proceedings the notification was checked by GPS and orthophoto and was confirmed as correct.

As nobody reacted to the notification, the claim was treated as uncontested. The KPA had no difficulty finding that P. and P.N. was one and the same, as the claimant's ID-card showed that the claimant's father was called R. and the possession list showed that R. was the husband of "P.".

On 2 September 2010, the Kosovo Property Claims Commission (KPCC) with its decision KPCC/D/A/83/2010 found that the claimant had established ownership over the claimed property or such part thereof as specified in the respective individual decisions. The Commission ordered that the claimant be given possession of the claimed property and that any person occupying the property vacate the same within 30 days of the delivery of the order, otherwise they be evicted.

The decision was served on the claimant on 14 March 2011. On 4 May 2011 the claimant requested repossession of the property.

On 6 or 7 July 2011, S.D., made a statement with the KPA. He declared that he had met a person with the Decision of the KPCC on 5 July at his place. Only then he became aware that the property was disputed. He declared that the parcels had been in possession of his family for 50 to 60 years and that he considered it to be the property of his late father H.D. who was killed in 1998 together with six other close family members. Furthermore, he stated that the documentation concerning the property had been burnt during the war. He requested an urgent meeting with the Head of the KPA.

To support his statement, S.D. (henceforth: the appellant) provided the KPA on 1 August 2011 with written statements of his siblings, E.D., S.D., A.D., H.D.M., F.D.Z. and G.D.S.. All confirmed the statement of S.D. that the parcels had belonged to their late father, that there had been a sales contract which had been burnt during the conflict in Kosovo and that the parcels had been cultivated by the family since 50 to 60 years.

The KPA interpreted the statement as an appeal and served it on the claimant (henceforth: the appellee) on 22 September 2011. The appellee did not react.

Legal reasoning:

As a preliminary matter, the Supreme Court observes that the appellant did not give any details about his address apart from his phone number.

The Supreme Court agrees with the KPA that the statement has to be interpreted as an appeal against the KPCC's decision KPCC/D/A/83/2010. It is obvious that the appellant wants to challenge this decision, even if he does not explicitly request to quash it. Furthermore, the case file contains an e-mail of 12 July 2011, with which one staff member of the KPA asks another to contact the appellant and inform him that there was no need to have a meeting with the management, that instead his request would be send as appeal to the Supreme Court and that in case he possessed any documents he had to submit them within a deadline of 30 (thirty) days. As indeed the appellant submitted the written statements on 1 August 2011, the Court concludes that the appellant was informed of the legal consequences of his statement and that he was willing to file this appeal.

This appeal, however, is impermissible.

According to Section 12.1 of UNMIK Regulation 2006/50 as amended by the Law No. 03/L-079 on the resolution of claims relating to private immovable property, including agricultural and commercial property, a

party may submit an appeal within thirty (30) days of the notification of the decision. Also articles 176.1 and 177.1 of Law No. 03/L-006 on Contested Procedure provides that the right to file an appeal belongs to the parties at the first instance proceedings.

In the present case, the appellant was not a party at the first instance proceedings before the KPCC. To explain such a situation, the appellant asserts that he became aware of the dispute concerning the parcels only on 5 July 2011 that is after the KPCC's decision of 2 September 2010. Indeed, pursuant to Section 10.3 of UNMIK Regulation 2006/50 as amended by the Law No. 03/L-079: "A person with a legal interest in the claim who did not receive notification of a claim may be admitted as a party at any point in the proceedings."

Therefore, the Supreme Court has to check whether S.D. was notified with the claim. The way to notify of a claim in this exceptional mass claim process is foreseen by section 10.1 of UNMIK Regulation 2006/50 as amended by the Law No. 03/L-079. According to this provision, the Executive Secretariat has to notify the claim to any person other than the claimant who is currently exercising or purporting to have rights to the property or to make reasonable efforts to notify the claim to any person who may have a legal interest in the property.

In the case at hand, the KPA operator noted that the property was occupied, but that the notification team did not succeed in getting the name of the occupant. Therefore, the Executive Secretariat processed to the notification by setting up a poster on each of the parcels on 12 April 2010. This measure constitutes reasonable efforts to properly notify of the claim. Furthermore, nothing indicates that S.D. could not have been aware of the notification. He lives at the village where the parcels are situated (in his statement he says that he met the person with the KPCC's decision at his place) and the panels were put not on land never visited, for example just shrubbery, but on land which was cultivated. Since the time limit to file a defence to the claim is 30 days, S.D. had the opportunity to respond to the claim until 12 May 2010.

From all the above mentioned elements, the Supreme Court holds that the appellant had the opportunity to be aware of the proceedings and to file his defence at the first instance level. As he did not reply to the claim within the deadline and as he was not a party before the KPCC, he is not any more allowed to appear before the Supreme Court for filing an appeal. Thus his appeal shall be dismissed as impermissible pursuant to section 13.3 (b) of UNMIK Regulation 2006/50 as amended by the Law No. 03/L-079 (see also article 196 and 195.1 (a) of the Law on Contested Procedure).

Costs of the proceedings:

Pursuant to Annex III, Section 8.4 of AD 2007/5 as amended by Law No. 03/L-079, the parties are exempt from costs of proceedings before the Executive Secretariat and the Commission. However such exemption is not foreseen for the proceedings before the Appeals Panel. As a consequence, the normal regime of court fees as foreseen by the Law on Court Fees (Official Gazette of the SAPK-3 October 1987) and by AD No. 2008/02 of the Kosovo Judicial Council on Unification of Court fees are applicable to the proceedings brought before the Appeals Panel.

Thus, the following court fees apply to the present appeal proceedings:

- court fee tariff for the filing of the appeal (Section 10.11 of AD 2008/2): € 30
- half of the court fee tariff for the issuance of the judgment (10.21, 10.15 and 10.1 of AD 2008/2), considering that the value of the property at hand could be reasonably estimated as being comprised at € 3.000: € 12,50.

These court fees are to be borne by the appellant who loses the case. According to Article 45.1 of the Law on Court Fees, the deadline for fees' payment is 15 days. Article 47.3 provides that in case the party fails to pay the fee within the deadline, the party will have to pay a fine of 50% of the amount of the fee. Should the party fail to pay the fee in the given deadline, enforcement of payment shall be carried out.

Legal Advice

Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Anne Kerber, EULEX Presiding Judge ***Sylejman Nuredini, Judge***

Elka Ermenova, EULEX Judge ***Urs Nufer, EULEX Registrar***