

**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-47/11

Prishtinë/Priština

24 August 2011

In the proceedings of:

J.M.

Appellant

vs.

S.P.V.

Claimant/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Antoinette Lepeltier-Durel, Presiding Judge, Anne Kerber and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/R/15/2008 (case file registered at the KPA under the number KPA 47378), dated 30 April 2008, after deliberation held on 24 August 2011, issues the following

JUDGMENT

- 1- The appeal of J.M. is dismissed as impermissible.**

- 2- The decision of the Kosovo Property Claims Commission KPCC/D/R/15/2008, dated 30 April 2008, as far as it relates to the case registered under the No. KPA 47378, is upheld.

- 3- Costs of proceedings determined in the amount of 280 Euro (two hundred and eighty Euro) are to be borne by the appellant and to be paid to the Kosovo Budget within 15 (fifteen) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 16 November 2007, S. (P.) V. filed a claim with the Kosovo Property Agency (KPA) seeking for property right confirmation over and repossession of a one floor house and a backyard located on the parcel situated Svete Stefanovica Street 5, Prishtinë/Priština, registered under the no. 5879, possession list no. 3370 of the cadastral zone and the Municipality of Prishtinë/Priština, with a surface of 346 m².

He stated that he was the owner of this building, that he lost possession of the building on 20 June 1999 due to the armed conflict and that the building was now illegally occupied by J.M.. He alleged that he had the information that the building was used as a private kindergarten.

To support his claim, he provided the KPA with a sketch of the place where the building was situated and with the possession list no. 3370 of the cadastral zone and the Municipality of Prishtinë/Priština dated 23 February 2000, showing that the house and the backyard were registered under his name.

In its notification report, the KPA confirmed that the litigious parcel was occupied by J.M. at the time of its identification and used as a private kindergarten. The Executive Secretariat processed to the notification of the claim on J.M. himself who was present on 22 January 2008 but who did not sign the notice of participation in the legal proceedings. On the same day, the Executive Secretariat set up a poster on the door of the backyard and on 4 March 2008 it published the claim. No respondent filed a reply within the 30 days deadline from the publication.

The verification report of the KPA stated that the submitted possession list was found and confirmed at the Cadastral Office with an updated possession list issued on 13 February 2008, showing S.V. as property right holder.

By its decision of 30 April 2008, the KPCC held that the claimant had established his ownership right over the claimed property and was entitled to possession of the said property and that any person occupying the property had to vacate it within 30 (thirty) days of the delivery of the decision.

The claimant received the KPCC's decision and filed a request for administration of the property by the KPA on 10 July 2009.

On 28 March 2011, J.M. (herein after the appellant) filed an appeal with the Supreme Court against the aforementioned decision.

In his appeal, he asserted that he had not been informed about the proceedings before the KPA and alleged that he had bought the litigious building on 2 August 1999. He maintained that the KPCC's decision was taken upon an erroneous or incomplete determination of the facts.

In support of his appeal, he provided the Supreme Court with the following documents:

- 1- a purchase contract of the claimed property signed by E.M. as seller's representative and himself as buyer, dated 20 December 1998 and certified by the Municipal Court of Prishtinë/Priština on 25 July 2000 under Ov. no. 1292/2000;
- 2- a power of attorney signed by S.V. in 1999 (without any further details about the date) given to "my friend E.M.", as it is mentioned in it, for leasing or selling the property at hand, certified on 2 August 1999 by the Municipal Court of Kursumlija under Ov. no.128/99;
- 3- copies of identity cards of both E. and J.M..

The appeal was served on the appellee's son on 24 May 2011. On 20 June 2011, S.V. replied and alleged that the submitted contract is a forgery. He stated that at the time this contract was supposed to have been signed, he was still living in the house. He asserted that he had never intended to sell his house and had only given to his friend E.M. the mandate to take care of his house. He mentioned that he had never perceived any amount of money from the alleged sale.

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 so that the address mentioned in the records of proceedings before judgment is the one which appears in the submitted sale contract.

Admissibility of the appeal:

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.

The right to file an appeal belongs to the parties at the first instance proceedings as provided by article 348 of the Law on Contested Procedure (Official Gazette 4/77-1478, 36/80-1182, 69/82-1596, applicable to the present procedure since the KPCC's decision was issued prior to the entrance into effect of the Law on Contested Procedure No. 03/L-006, according to articles 533-1 and 538 of this latter law relating to the applicability in the time of the new procedural provisions).

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 was not aware of those proceedings. 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 J.M. 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. The same provision adds that "*in*

appropriate cases, such reasonable efforts may take the form of an announcement in an official publication of the Executive Secretariat”.

In the case at hand, the KPA operator noted that the property was occupied by J.M. who was present and was given knowledge of the claim. Since J.M. did not sign any receipt of such notification, the Executive Secretariat processed to the notification by setting up a poster on the door of the fence surrounding the property on 22 January 2008. Then the publication of the claim was done on 4 March 2008. Those measures constitute reasonable efforts to properly notify of the claim. Since the time limit to file a defense to the claim is 30 days after the latter of those two dates, J.M. had the opportunity to file his defense until 3 April 2008.

From all the above mentioned elements, the Supreme Court holds that the appellant had several opportunities and a pretty long time to be aware of the proceedings and to file his defense 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 article 358 of the Law on Contested Procedure (Official Gazette 4/77-1478, 36/80-1182, 69/82-1596).

Costs of the proceedings:

Pursuant to Article 8.4 of Administrative Direction (AD) 2007/5 as amended by the 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 Supreme Court.

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 Supreme Court.

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 court fee tariff for the issuance of the judgment (Sections 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 300 000 €: 250 €.

These court fees are to be borne by the appellant who loses the case.

According to Article 45 of the Law on Court Fees, the deadline for outstanding fees payment is 15 days from the day the judgment is delivered. As a consequence of non-payment within the deadline, compulsory execution including a fine as provided by Article 47 of the same law shall be ordered.

Legal Advice

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

Signed by: Antoinette Lepeltier-Durel, EULEX Presiding Judge

Signed by: Anne Kerber, EULEX Judge

Signed by: Sylejman Nuredini, Judge

Signed by: Urs Nufer, Eulex Registrar