SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA

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

GSK-KPA-A-60/11 **Prishtinë/Priština**

1 March 2012

In the proceedings of:

A.T.

Appellant

vs.

B.M.

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/92/2010 (case file registered at the KPA under the number KPA15124), dated 28 October 2010, after deliberation held on 1 March 2012, issues the following

JUDGMENT

1- **The appeal of A.T. is accepted as grounded.**

2- **The decision of the Kosovo Property Claims Commission KPCC/D/A/92/2010, dated 28 October 2010, as far as it relates to the case registered under the number KPA15124, is quashed and the case returned to the KPCC for reconsideration.**

3- **The costs of the proceedings will be decided upon by the KPCC.**

Procedural and factual background:

On 5 September 2006, B.M. filed a claim with the Kosovo Property Agency (KPA), seeking to be recognized as the owner of an ideal share of 2/3 of 1/5 (that is: 2/15) of a parcel of land acquired by inheritance and claiming repossession. She asserted that her late husband had been owner of the property with an ideal part of 1/5 and that she had inherited this ideal part to 2/3. The claim concerns the parcel No. 147/2, located at a place called "Mali Koskovik", cadastral zone of Babimoc/Babin Most in the municipality of Obiliq/Obilić, a 5th class field with a surface of 0 h 83 a and 58 m2. The claimant stated that the property was lost on 12 June 1999 as a result of the circumstances in 98/99 in Kosovo.

To support her claim, she provided the KPA with the following documents:

- Possession List No. 171 of the Municipality of Prishtinë/Priština, cadastral zone Babimoc/Babin Most, issued by the Republic of Serbia on 12 November 1997, showing that the claimed parcel as well as other parcels was registered under the name of M. (P.) B. (part: 2/15) and M. (M.) N. (part: 1/15);
- Inheritance Decision of the Municipal Court of Prishtinë/Priština O.br. 14/96, issued on 16 June 1996, according to which B.M. inherits 2/3 of the property of her late husband M.M.; amongst the inherited property is the right to 1/5 of the immovable property which is located on the cadastral parcel No. 147/2 in the cadastral zone of Babimoc/Babin Most at the place called "Mali Koskovic", a 5th class field with a surface of 83 a 58 m2,

Both documents could be verified by the KPA. The Possession List No. 171, issued by the United Nations Interim Administration on 12 September 2007, showed for the alleged parcel six different possession right holders, amongst them the claimant with a right to 2/15 of the property. The claimant was also found registered in the Certificate for the Immovable Property Rights issued on 16 October 2007 (UL-72602001-00171).

On 27 July 2007, KPA officers went to the place where the parcel was allegedly situated and put up a sign indicating that the property was subject to a claim and that interested parties should have filed their response within 30 days.

As the parcel had been found not occupied and nobody responded, the KPA processed the case as uncontested and on 19 December 2007 in its decision KPCC/D/A/2007, the KPCC decided in favour of the claimant.

Later on it was found that all claims submitted had to undergo a procedure of re-identification of property and comparison of the available data with the cadastral data so as to avoid a possibility of misidentification of the property. Therefore the KPCC'S decision in regard to the claimed property was considered invalid.

Consequently, in 2010, the notification was repeated. This time, the claim was published in the KPA Gazette No. 6 and the UNHCR Property Office Bulletin. On 28 July 2010, the KPA notification team left the Gazette and the list with the Head of the village of Babimoc/Babin Most who agreed to make it available to interested parties. The team also placed the publications at the entrance and exit of the village. Furthermore, the Gazette and the list were published in the Municipality of Prishtinë/Priština as well as in the Cadastral Office and the Municipal Court of Prishtinë/Priština and the Prishtinë/Priština Regional Office of the KPA. Gazette and list also were distributed to the Head Offices of UNHCR, the Ombudsperson, Kosovo Cadastral Agency (KCA), the Danish Refugee Council (DRC) and the UNMIK Office in Graçanicë/Gracanica. However, the KPA did not put up a sign informing about the claim on the parcel.

On 28 October 2010, the KPCC in its decision KPCC/D/A/92/2010 decided that the claimant had established ownership over 2/15 of the claimed property and was entitled to the possession of the said property.

The decision was served on the claimant on 6 June 2011.

Already on 24 May 2011, A.T. (henceforth: the appellant) had filed an appeal with the Supreme Court against the aforementioned decision which, according to him, was based on insufficient facts and an erroneous assessment of evidence. He stated that the property had been privatized by the KTA and that he was the owner.

To support his allegations, he provided the Supreme Court with a Certificate for the Immovable Property Rights – UL-72602001-00187 – issued on 3 November 2009 by the Cadastral Agency of Kosovo. This Certificate showed that owner/possessor of the claimed property was "Z" to 1/1 part (the Certificate insofar had been updated on 18 October 2007) and that A.T. had the right of use to all the 132 parcels listed in this certificate, amongst them the litigious parcel, for 99 years (insofar the certificate was updated on 12 December 2008).

Later on in the proceedings, the appellant declared that he had not been aware of the claim as he had not received any notification. Furthermore, he explained that on 23 July 2007 he had signed a contract with KTA regarding the purchase of the property. He provided the Court with copies of the following documents:

- Shareholder resolution of the general meeting of shareholders, signed 23 July 2007 by P. A., chairman of the KTA (Kosovo Trust Agency) Board, according to which the KTA decided to have the company "X" (Company) issue one share, to be held in trust by the KTA on behalf of the Socially Owned Enterprise "Y" (SOE); and that the assets of the SOE might be transferred to the Company;
- Copy of page 6 of a **draft** concerning property transfers, according to which, amongst others, parcel No. 147/2, registered in possession list No. 187 of Babimoc/Babin Most, was held by the SOE and was to be transferred to the Company; in addition, any right of use to this property should be transferred into a leasehold of 99 years, commencing from the date of entry into force of the land regulation (9 May 2003);

The appellant requested the Supreme Court to reject the claim.
The claimant (henceforth the appellee) replied that to her knowledge A.T. never had bought the land and so implicitly requested from the Supreme Court to uphold the KPCC's decision.

The appellee explained that after the death of her mother, B.D., her daughter and sister of the appellee, V.D. inherited parcel No. 147, a 5th class field with a surface of 1 h 89 a 58 m^2, registered in

possession list No. 99 of Babimoc/Babin Most (see Judgment of the Municipal Court of Prishtinë/Priština, issued on 5 December 1969, file number illegible).

Yet the copy of Possession List No. 99, submitted by the appellee and issued on 7 April 1969, shows as property right holder to parcel No. 147 Z.M..

The appellee also submitted a judgment of the Municipal Court in Prishtinë/Priština, according to which it was established that B., D., A., M. and M. M. already in 1967 had sold to V.S. a part of 58 a of parcel No. 147, registered in Possession List No. 99. The appellee explained that the transfer was never registered, as S. did not want to pay the taxes.

According to the appellee, in 1974, V.D. exchanged her inherited part with the "Z". The attached agreement shows that V.D. exchanged with the "Z" a part of the parcel No. 427 and a part of the parcel No. 1064, both registered in Possession List No. 262. Parcel No. 147, registered in Possession List No. 99, however, is not mentioned.

Legal reasoning:

The appeal is admissible and grounded. Thus the KPCC's decision has to be quashed. As the appellant's reasoning has not been considered by the KPCC, the case had to be sent back to the KPCC for reconsideration.

Regarding admissibility: The appellant has filed his appeal within the deadline prescribed by Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079. As the KPCC's decision had not been served on the appellant, the deadline has not begun and accordingly has not expired yet.

As to the grounds of the appeal: Section 10.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 prescribes: "*Upon receipt of a claim, the Executive Secretariat shall notify and send a copy of the claim to any person other than the claimant who is currently exercising or purporting to have rights to the property which is the subject of the claim and make reasonable efforts to notify any other person who may have a legal interest in the property*". Here, however, the Supreme Court finds that the efforts of the KPA to notify have not been sufficient:

- The notification of the year 2007 (putting up of a sign on the location where the parcel allegedly was located) has not been considered valid by the KPA itself, which repeated the notification in the year 2010.

- In 2010, however, the KPA restricted itself to publishing the claim and distributing the Gazette as well as the list in the village and to other institutions. This alone cannot be considered as "reasonable efforts" in the sense of Section 10.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079. The KPA should have put up a sign on the litigious parcel as well, as this would have considerably heightened the probability of an interested party taking notice of the claim. Putting up a sign also would have been no more than the necessary "reasonable effort". The Court noted that this kind of notification has been chosen by the KPA in the majority of the cases, the notification by publication usually is done as an additional measure. Moreover, in 2007 the KPA did the notification of the litigious parcel in this manner.

The appellant asserts that he had not been aware of the proceedings before the KPA. Although he gives no explanation for this, the Court cannot exclude that this lack of awareness was due to the insufficient notification.

Therefore, the appellant not only has to be accepted as a party to the claim, but secondly the decision of the KPCC has to be quashed and the case sent back for reconsideration as the Court noted a serious misapplication of the applicable procedural law.

As consequence of the insufficient notification, the appellant could not participate in the proceedings before the KPA, he could not present his opinion and the facts important to him but was obliged to present these facts only to the appellate instance.

A party, however, usually is entitled to be heard not only by one (in this case: the appellate) instance, but to be heard by at least two instances. If a party – as in this case – is deprived of this right by a fundamental mistake of the first instance, this has to be considered a substantial violation of the procedure. Also the Court finds a substantial violation of the provisions of contested procedure, (Article 182.1 of Law No. 03/L-006 on Contested Procedure in connection with Section 13.5 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079). The fact that the Commission did not consider the response is an equally significant violation of the law as the substantial violations

enumerated in Article 182.2 (h) and (i) – rendering a judgment based on the parties' failure to comply or absence contrary to the provisions of the law. Consequently, the case has to be sent back for reconsideration and decision (Art. 195.1 (c) of Law No. 03/L-006 on Contested Procedure), even though the Court is aware that the proceedings of the KPA and KPA Appeals Panel should be expeditious.

In the new proceedings, the KPCC will have to consider the arguments of the appellant as well as the new facts presented by the appellee – as far as these regard the litigious parcel.

Costs of the proceedings:

As the decision of the KPCC is quashed and the case is returned for reconsideration, the costs of the proceedings will be decided upon by the KPCC as the first instance (Art. 465.3 LCP).

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.

Anne Kerber, EULEX Presiding Judge ***Elka Ermenkova, EULEX Judge***

Sylejman Nuredini, Judge ***Urs Nufer, EULEX Registrar***