**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-7/10** **Prishtinë/Priština**

**24 August 2011**

**In the proceedings of:**

**M.T.**

***Appellant***

vs.

**J.D.B.**

***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/A/13/2008 (case file registered at the KPA under the number KPA 08070), dated 30 April 2008, after deliberation held on 24 August 2011, issues the following

**JUDGMENT**

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

2- **The decision of the Kosovo Property Claims Commission KPCC/D/A/13/2008, dated 30 April 2008, in the case registered under the No. KPA 08070 is upheld.**



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3- **Costs of proceedings determined in the amount of 42,5 Euros (forty two Euros fifty cents) are to be borne by the appellant, M.T., 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 20 October 2006, J.B. filed a claim with the Kosovo Property Agency (KPA) seeking for property right confirmation over and repossession of the parcels of land located at the places called "Selo-Plac" and "Selo-do Placa", registered under the nos. 177 and 178 of the cadastral zone of Pomozotin/Pomazatin in the Municipality of Fushë Kosovë/Kosovo Polje, with a surface respectively of 0, 08, 79 ha (0, 07, 43 ha + 0, 01, 36 ha) and 0, 31, 22 ha.

He explained that these parcels belonged to his late mother M.M.B. as evidenced by the possession list no. 35 of the cadastral zone of Pomozotin/Pomazatin in the Municipality of Fushë Kosovë/Kosovo Polje, dated 17 April 1995, which he submitted with the claim. He added that the property was unlawfully occupied by S.S..

To support his claim, he also provided the KPA with his birth certificate and his mother's death certificate.

In its notification report, the KPA noted that the litigious parcels were not occupied at the time of their identification. It processed to the notification of the claim on 15 November 2007 by setting up three posters on the parcels and to its publication on 24 December 2007. The pictures of the parcels on which the signs were set up do not show any house or any forest on them. Since no respondent filed a reply within the 30 days deadline from the publication, the claim was considered as uncontested.

The verification report of the KPA stated that the submitted documents were found and confirmed at the Cadastral Office and at the Civil Registration Office. The Executive Secretariat of the KPA *ex officio* included in the case file the certificate for the immovable property rights of the parcels at hand, dated 14 February 2008, which indicates M.B. as owner of these parcels.



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In the claim processing report to the Kosovo Property Claims Commission (KPCC), it was mentioned that the date of loss of possession was 10 September 1999 and that the loss was due to the overall security situation in Kosovo at that time.

By its decision of 30 April 2008, the KPCC held that the claimant had established ownership of the deceased property right holder 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's representative who had filed a power of attorney certified on 27 January 2009 received the KPCC's decision on 4 March 2009 and filed a request for administration of the property by the KPA on 1 December 2009.

On 12 July 2010, M.T. (herein after the appellant) filed an appeal with the Supreme Court against the aforementioned decision.

In his appeal, he asserted that he had bought the litigious parcels in 1981 and had been using the property since then without any obstruction and that the claimant had signed the purchase contract. He stated that he had not been informed of the claim brought before the KPA. 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 handwritten purchase contract of a house, a parcel with surface of 1,10 ha and a forest with surface of 1,60 ha, concluded on 8 February 1981 between B.B. as seller and F.T. as buyer, with two receipts of the remaining price to be paid, dated 7 May and 17 May 1981. He also submitted 4 statements of witnesses declaring that the family of F.T. had bought the property in 1981 and had been living there from that time. None of those documents bore any indication neither of the cadastral data nor of the location of the then sold parcels.

With the order served on 21 April 2011, the Supreme Court asked the appellant, concerning the identity of the parties to the sale contract dated 8 February 1981 that he had submitted with his appeal, to indicate what was the link between B.B., alleged seller in the contract, and the appellee/claimant and what was the link between the alleged buyer in the contract, F.T. and himself. The appellant was also asked to submit a contract certified by the Municipal Court or to explain why



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the sale contract had not been certified, to precise whether the parcels that were described in the contract as "*a house with parcel of 1,10 ha and a forest of 1,60 ha*" were really the same parcels as the ones, subject matter of the decision of the KPCC/A/13/2008 which are described as pasture of class 1 and field of class 2 of respectively 0, 07, 43 ha + 0, 01, 36 ha and 0, 31, 22 ha. Finally the appellant was required to provide the Supreme Court with details about the cadastral data of the parcels he claimed (numbers, possession list and location).

Although the seller is indicated as being B.B. in the handwritten contract, the appellant asserted in his response to the order that the seller was D.B., the appellee's father. He added that he was F.T.'s son and provided the Court with his birth certificate proving this lineage. He explained that the contract neither had been certified by the municipal court nor registered in the cadastre, due to the discriminating laws of that time forbidding any transaction between Serbs and Albanians. He maintained that J.B. himself was one of the witnesses who signed the contract. Indeed the signature of the claim by J.B. and one of the signatures appearing on the contract are the same.

Then the appellant referred to other parcels which are not the subject matter of the present proceedings. Finally he asked the Supreme Court to consider that he had been possessing the land at stake for more than 20 years and had therefore acquired it through adverse possession.

By letter of 11 April 2011, the Supreme Court requested the KPA to provide clarification about the service of the appeal on the appellee. According to the Executive Secretariat, the appeal was served after verification of the appellee's address but since this service was not evidenced by a receipt signed by the appellee, the appellee was formally served with the appeal on 17 June 2011. He did not reply within the deadline of 30 days.

**<u>Legal reasoning:</u>**

As a preliminary matter, since it appears that the parties might be involved in other proceedings relating to other parcels, the Supreme Court deems important to emphasize that the present judgment is only relating to the proceedings concerning the parcels of land no. 177 and 178 located at the places called "Selo-Plac" and "Selo-do Placa" of the cadastral zone of Pomozotin/Pomazatin, of which surface is 0, 08, 79 ha and 0, 31, 22 ha and which are described as respectively being pasture of class 1 and field of class 2.



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***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 M.T. was notified of 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 make reasonable efforts to notify any person who may have a legal interest in the property of the claim. 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*". This provision is applicable in the case the current occupant cannot be found or in the case the parcel is not occupied.

In the case at hand, the KPA operator noted that the parcels were not occupied and processed to the notification by setting up signs on the parcels on 15 November 2007. Then the publication of the claim was done on 24 December 2007. 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, M.T. had the opportunity to file his defense until 24 January 2008.



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M.T. explains that he has been continuously living on the claimed land and at least in the municipality of Pomozotin/Pomazatin for 30 years. The pictures of the parcels show that they are situated close to a road and a village and are not in a remote place far from any inhabited zone. As a consequence, his attention should have been attracted by the signs set up on the parcels he pretends having possessed for a long time and/or by the publication of the claim.

As M.T. did not reply within the deadline, 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 comprised between 2 501 and 5 000 €: 12,5 €.

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.



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**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.

**Antoinette Lepeltier-Durel, EULEX Presiding Judge**

**Anne Kerber, EULEX Judge**

**Sylejman Nuredini, Judge**

**Urs Nufer, Eulex Registrar**



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