1982 October 12

[L. LOIZOU, DEMETRIADES AND PIKIS, JJ.]

IMPROVEMENT BOARD OF KAMBOS,
Appellant-Defendant,

v.

KLEONIKI SAVVA KOUDELLARI,
Respondent-Plaintiff.

(*Civil Appeal No.* 6235).

Streets and Buildings Regulation Law, Cap. 96—"Service of notice" within the meaning of sub-section (2) of section 15(A) of the Law—It must be affirmatively proved that the notice, no matter what alternative mode of service the sender chose to adopt, must have actually come into the hands of the addressee.

The sole question in this appeal was whether the sending of a notice by registered post by the appropriate Authority under the provisions of s.3(2)(b) of the Streets and Buildings Regulation Law, Cap. 96 amounted to "service of notice" within the meaning of the definition of "service" as set out in sub-section (2)* of section 15(A) of the Law.

Held, that a perusal of the clear wording of the definition and particularly the first paragraph thereof with which this Court is concerned in the present case, leaves no room for doubt that the correct construction to be placed on it is that it must be affirmatively proved that the notice, no matter what alternative mode of service the sender chose to adopt, must have actually come into the hands of the addressee; and that this Court does not think that, considering the consequences of "service",

* Sub-section (2) reads as follows:

" "Service" of notice is deemed to be effected if delivered to the owner or, where he is not in the Republic and his address is known, if sent to him at such address by double registered letter or, where the owner is not known or cannot be traced, if published in at least two daily newspapers of the language of the owner circulating in the district within which the building is situated and posted up at a conspicuous part of the building".

the intention of the legislature could have been anything else (*Theodorou v. Abbot of Kykko Monastery* (1965) 1 C.L.R. 9 and *Katsantonis v. Frantzeskou* (1981) 1 C.L.R. 566 distinguished).

Appeal dismissed.

Cases referred to:

Theodorou v. Abbot of Kykko Monastery (1965) 1 C.L.R. 9;

Katsantonis v. Frantzeskou (1981) 1 C.L.R. 566;

Fawcett v. Graham, a New Zealand case reported in (1973) 1 N.Z.L.R. 495.

Appeal.

Appeal by defendant against the judgment of the District Court of Nicosia (Ioannides, D.J.) dated the 24th January, 1981, (Action No. 3265/78) whereby the defendant was adjudged to pay to plaintiff the sum of £80.– as damages caused to the wall of plaintiff's house.

K. Michaelides, for the appellant.

P. Petrides, for the respondent.

Cur. adv. vult.

L. LOIZOU J. read the following judgment of the Court. The appellants are the Improvement Board of Kambos village and the appropriate authority within the area under the provisions of s.3(2)(b) of the Streets and Buildings Regulation Law, Cap. 96. The respondent is the owner of a house at the same village.

On the 6th September, 1976, the appellant sent a notice to the respondent by registered post under s.15A of the Streets and Buildings Regulation Law, as set out in Law No. 6/64, informing her that her house was in such a state as to constitute a danger to passers by or to neighbouring houses or to persons residing therein or in a neighbouring house and requesting her to demolish part of a downstairs room which allegedly was in a ruinous condition and also to repair the rest of the premises within one month from the service of the notice. By the same notice the respondent was informed that if she failed to take the measures indicated in the notice within the period specified therein the Board would proceed and take such measures for the repair and or demolition of the part of

the premises that was in a ruinous condition as they considered necessary and that she would have to pay all costs incurred. In fact, some considerable time later, in January, 1978, the appellants demolished part of the downstairs room because the respondent had not complied with the notice. On the 30th August, 1978, the respondent instituted proceedings against the Board claiming £250 damages for trespass and an injunction restraining the appellants from interfering with her property. The appellants counterclaimed for a sum of £20 being the costs incurred by them in domolishing the part of the downstairs room.

The learned trial Judge heard the evidence of the respondent and one witness called on her behalf and of three witnesses called by the appellants. Most of the evidence was with regard to the state of the premises and the amount of damages. With regard to the notice it was the case for the appellants that they forwarded the notice to the respondent by registered letter addressed to her at Kambos village, presumably on the 6th September, 1976, and that the letter had not been returned. D.W.3, Zographos, a District Inspector, who testified as to this fact was not in a position to say if the respondent had actually received the letter nor did he have any proof that the letter was actually delivered. Another witness called by the appellants, D.W.2, Stelios Iosif, an Inspector of the Board, gave evidence to the effect that he had orally informed respondent's daughter and son-in-law who lived at the village and also a son of hers who lived in Nicosia of the state of the respondent's house and of the need for repairs and this because the respondent was not residing at the village and the witness did not know where to find her.

The respondent on the other hand testified that for some five years prior to the trial she had been living at Psimolophou village and only visited Kambos occasionally. She denied that she had ever received the notice in question or that anybody had informed her of the decision of the Board. That the respondent was not residing at Kambos village and her house was unoccupied in 1976 is common ground.

The learned trial Judge found as a fact that the notice had been posted to the respondent and that it had not been returned. But having regard to the evidence of the respondent and in the

circumstances of the case came to the conclusion that she had never received the letter. Also, having regard to the wording of s.15A and particularly the definition of the word "service" he came to the conclusion, and so held, that the appellants did not comply with the provisions of the section in as much as it had not been proved that the notice had been delivered to the owner, and that, therefore, the demolition was unlawful. In the result the appellants were adjudged to pay to the respondent the sum of £80 by way of damages and the appellants' counterclaim was dismissed.

By the present appeal the appellants challenge the correctness of the Court's judgment on the following grounds:

"1. The interpretation placed by the trial Court on section 15A of the Streets & Buildings Regulation Law, Cap. 96, as amended, is wrong.

2. In view of the findings of the trial Court that the letter dated 6.9.1976 was sent registered by the witness Zographos on behalf of appellant and same was not returned, the finding of the trial Court that plaintiff-respondent did not receive same was contrary to the evidence and unreasonable.

3. The trial Court wrongly failed to take into consideration the fact that the children of plaintiff-respondent were informed of appellant's decision to declare the subject-property as being in a dangerous and ruinous condition and that the demolition took place in January, 1978.

4. In view of the evidence adduced the trial Court wrongly found that the subject-matter room was unlawfully demolished and that same had some value and wrongly found that plaintiff-respondent suffered £80.- damages amount which under the circumstances of the case and evidence adduced was, in any way manifestly excessive.

5. In view of the evidence adduced the trial Court wrongly dismissed appellant's counterclaim".

We need not concern ourselves with the part of the appeal relating to the damages as the parties have agreed, very properly in our view, that such damages should be assessed at £25.

The gist of the argument of learned counsel for the appellants in this Court with regard to the notice mainly was that the trial Judge wrongly concluded that the respondent had not received the notice and that, therefore, there was no compliance with the provisions of the relevant section of the law especially in view of the finding that the notice had been forwarded by registered post and the letter was not returned. Once it was proved, he argued, that the letter was posted and had not been returned the irrebutable presumption was that it was delivered. In support of his argument counsel cited *Soctates Theodorou* v. *Abbot of Kykko Monastery* (1965) 1 C.L.R. 9, *Ioannis Katsantonis* v. *Kyriacos Frantzeskou* (1981) 1 C.L.R. 566 and also from Words and Phrases Legally Defined, Butterworth, Supplement 1975, 2nd edition, the case of *Fawcett* v. *Graham*, a New Zealand case reported in (1973) 1 N.Z.L.R. 495.

We do not think that this Court can derive much assistance from the above cases as they are clearly distinguishable from the present case in as much as in none of the cases cited was there a provision similar to the provision of the section we are dealing with. In the cases cited the issue turned on the presumption or inference that a letter shown to have been posted and not returned by the Post–Office is prima facie evidence of its delivery to the person to whom it is addressed. Particularly in the last two cases the relevant section of the law provided for alternative modes of service including service by registered post and in the *Katsantonis* case there was evidence that the addressee had in fact received the post–office slip and had failed to collect the letter.

The question that falls for consideration and decision in the present case is whether the notice, exhibit 1, had been "served" on the respondent in compliance with the provisions of s.15A of the Streets and Buildings Law and consequently on the correct construction of the word "service" as set out in sub–section (2) thereof. It reads as follows:

> " 'ἐπίδοσις' εἰδοποιήσεως λογίζεται γενομένη ἐὰν παραδοθῇ εἰς τὸν ἰδιοκτήτην, ἢ ἐὰν οὗτος εἶναι ἐκτὸς τῆς Δημοκρατίας καὶ ἡ διεύθυνσις αὐτοῦ γνωστή, ἐὰν ἀποσταλῇ εἰς αὐτὸν εἰς τὴν τοιαύτην διεύθυνσιν διὰ διπλῆς συστημένης ἐπιστολῆς, ἢ ἐὰν ὁ ἰδιοκτήτης δὲν εἶναι γνωστὸς ἢ δὲν εἶναι δυνατὴ ἡ ἀνεύρεσις, ἐὰν δημοσιευθῇ εἰς δύο τοὐλάχιστον ἡμερησίας ἐφη-

μερίδας τῆς αὐτῆς μετὰ τοῦ ἰδιοκτήτου γλώσσης, κυκλοφορούσας ἐν τῇ ἐπαρχίᾳ ἐν ᾗ κεῖται ἡ οἰκοδομή, καὶ τοιχοκολληθῇ εἰς ἐμφανὲς μέρος τῆς οἰκοδομῆς."

(" 'service' of notice is deemed to be effected if delivered to the owner or, where he is not in the Republic and his address is known, if sent to him at such address by double registered letter or, where the owner is not known or cannot be traced, if published in at least two daily newspapers of the language of the owner circulating in the district within which the building is situated and posted up at a conspicuous part of the building").

A perusal of the clear wording of the above definition and particularly the first paragraph thereof with which we are concerned in the present case, leaves no room for doubt in our mind that the correct construction to be placed on it is that it must be affirmatively proved that the notice, no matter what alternative mode of service the sender chose to adopt, must have actually come into the hands of the addressee. Nor do we think that, considering the consequences of "service" of the notice, the intention of the legislature could have been anything else. Another significant factor which in our view supports the finding of the trial Judge that the notice was not received by the respondent and that, therefore, there was no compliance with the provisions of the section, is the fact that although the notice was allegedly forwarded by registered post and it is a notorious fact that a registered letter must be signed for, even though not necessarily by the addressee, and thus delivery should not be difficult to prove, no such evidence has been forthcoming in the present case.

In the light of the foregoing we are in complete agreement with the conclusion reached by the trial Judge that the appellants have not complied with the provisions of s.15A in the sense that they have failed to prove "service" of the notice.

In the result this appeal is dismissed with costs on the scale applicable to the amount of the agreed damages.

Appeal dismissed with costs.