

**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-1/09

**Prishtinë/Priština
5 May 2011**

In the proceedings of

B.J., Q.J. and V.J.

Appellants

represented by

M.R.

vs.

Z.Z.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/2/2007, (case file registered at the KPA under the number KPA08426), dated 3 September 2007, after deliberation held on 5 May 2011, issues the following

JUDGMENT

1. The appeal of B.J, Q.J. and V.J. is dismissed as impermissible.
2. The appellants have to pay the costs of the proceedings which are determined in the amount of € 37.50 (thirty-seven point fifty) within 15 days from the day the judgment is delivered or otherwise through compulsory execution. The appellants shall be jointly and severally liable to the costs.

Procedural and factual background:

On 9 January 2007 the claimant Z.Z.V. submitted to the Kosovo Property Agency (KPA) his ownership claim in relation to a property located in Lipjan/Lipljan Municipality, cadastral zone Donja Gušterica/Gushtericë e Poshtme, parcel no. 1462, a third class field with a surface of 2303 m². The claim was registered as KPA08426.

The claimant stated that his father, Z.R.V, was the property right holder of 1/1 ideal part of the claimed property.

To support his claim the claimant provided the KPA with possession list No. 638 of the Municipal Cadastral Office Lipjan/Lipljan from 26 February 1997, stating that the parcel no. 1462 was the possession of R.Z.V.

The possession list could be verified by the KPA by possession list no. 639 of 8 February 2007. The KPA also asserted that the loss of the property on 14 June 1999 was due to circumstances related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999. On 3 May 2007 the KPA published the claim notice.

On 18 June 2007 the KPA Notification Team went to the place where the property was allegedly located and put up the notification signs informing about the claim. However they put them not on the claimed parcel no. 1462 in the village of Donja Gušterica/Gushtericë e Poshtme in Lipjan/Lipljan but instead on parcel no. 2/66/1, registered in possession list no. 33 KO Petrovići

and on parcel no. 16/6 registered in possession list no. 571, Municipal Cadastre of Shtime/Štimlje (about 30 km away from the right parcel).

As the claim remained uncontested, on 3 September 2007 the Kosovo Property Claims Commission (KPCC) rendered the cover decision KPCC/D/2/2007 relating to the claim, stating that *“the claimant or the property right holder, as the case may be, has established ownership over the claimed property”*.

On 30 May 2008 the KPCC identified the claimed property *“Donja Gusterica, Lipjan/Lipljan, Possession list nr: 638, parcel nr: 1462”* stating that: *“Z.Z.V. has established ownership over 1/1 of the claimed property”*.

On 11 March 2008 the respondents approached KPA with an appeal against the decision concerning the claim KPA08426, the parcel no. 1462 in Donja Gušterica/Gushtericë e Poshtme. They stated that *“this property”* was purchased on 14 February 1956. To sustain their allegations they submitted a copy of a contract relating to two parcels. These parcels were registered in the possession list no. 33, KO Petrovici, under cadastre number 2/66/1, a parcel with a surface of 3.700 m² and in the cadastre list number 571 of the Municipal Cadastre Office of Shtime/Štimlje, cadastral parcel no. 16/6 with a surface of 1000 m².

Having noticed the discrepancy between the claimed parcel and the parcels the respondents referred to, the Court asked the KPA for further information with letter of 19 May 2009.

With letter of 16 June 2009 the KPA informed the Court, that there had been a mistake during the notification process and that the wrong property had been notified of the initial KPA claim and the notification poster had been put up on a property which had not been claimed.

With letter of 7 July 2009 the Court informed the appellants that their property was not the claimed one, that there was no necessity to appeal and asked them whether they would withdraw the appeal. The representative of the appellants received the letter on 16 July 2009. The appellants did not answer the Court's request.

Legal reasoning:

The appeal is impermissible.

The appellants do not have the right to appeal. The right to appeal is assigned to those – and only those - persons, who are adversely affected by the contested decision. This is foreseen in Article 358

Paragraph 3 of the Law on Contentious Procedure (Official Gazette of SFRY, No. 4/1977, and Laws on Amendment and Supplement of the Law on Contentious Procedure, published in the Official Gazette of the SFRY, Nos. 36/80, 69/82 and other subsequent provisions), that is applicable according to Art. 533.1 of the Law No. 03/L-006 on Contested Procedure.

The contested decision of the KPCC, however, has no negative legal effect on the appellants. The decision relates to the parcel no. 1462, located in Lipjan/Lipljan Municipality, cadastral zone Donja Gušterica/Gushtericë e Poshtme. The appellants do not state that this parcel is their property. They only refer to the parcels no. 2/66/1 in Petrovici and no. 16/6 in Shtime/Štimlje, and therefore to two other parcels. The decision of the KPCC does not relate to these parcels. Accordingly the contested decision of the KPCC does not concern property which the appellants claim as their family's property. Hence the appellants are not adversely affected by the decision of the KPCC, they have no legal interest in filing this appeal.

Therefore, the appeal has to be rejected as impermissible.

Costs of the proceedings:

Pursuant to Annex III, Section 8.4 of Administrative Direction (AD) 2007/5 as amended by Law No. 03/L-079, the parties are exempted 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 (Sections 10.15, 10.21 and 10.1 of AD 2008/2), considering that the value of the property at hand could be reasonably estimated as being comprised between € 0 and 1.000: € 7.50.

These court fees are to be borne by the appellants who lost the case and who did not withdraw their appeal although the Court asked them whether they intended to do it. The appellants shall be jointly and severally liable to the costs (Article 161 Paragraph 3 of the Law on Contested Procedure, Official Gazette of SRFY, 4/1977, and Laws on Amendment and Supplement of the Law on Contested Procedure, Official Gazette of SFRY, 36/1980, 69/1982 and other subsequent provisions). The deadline for the payment is prescribed in Article 45 Paragraph 1 of the Law on Court Fees (Official Gazette of the SAPK-3 October 1987).

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.

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