

**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-6/09

Prishtinë/Priština, 9 June 2011

S.A.

Appellant

Represented by X.B.

vs.

M.M.

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/22/2008, (case file registered at the KPA under the numbers KPA 39606 and KPA 39607), dated 28 August 2008, after deliberation held on 9 June 2011, issues the following

JUDGMENT

- 1- The appeals filed by S.A. registered under the numbers **GSK-KPA-A-6/09** and **GSK-KPA-A-7/09** are joined in one single file registered under the number **GSK-KPA-A-6/09**.

- 2- **The appeals filed by S.A. on 15 September 2009 are rejected as impermissible.**

- 3- **Costs of proceedings determined in the amount of 60 Euros (sixty Euros) are to be borne by the appellant, S.A., and to be paid to the Supreme Court within 15 days from the day the judgment is delivered or otherwise through compulsory execution.**

Procedural and factual background:

The claimant M.M. filed ownership claims on 11 May 2007 before the KPA, seeking that the cadastral parcels 867/1 and 867/2, located at a place called “Velika Njiva”, in the cadastral zone of Kolovicë/Kojlovica, municipality of Prishtinë/Priština, classified as fields class III with respective surface of 0.36.10 hectare and 0.03.54 hectare, be returned into her possession and use, that any alienation of those properties be forbidden and she be compensated for the use of the properties without permission. She asserted that her late father was the owner of the parcels and that she lost the possession of that immovable and agricultural property on 12 June 1999 as result of the conflict that occurred in 1998/1999.

The claimant provided the KPA with the inheritance decision O. No. 5/96 dated 12 February 1996, issued by the Municipal Court of Prishtinë/Priština partly related to the cadastral parcels No. 867/1 and No. 867/2 of Kolovicë/Kojlovica. By this judgment it was found that M.M., daughter of the late S.N., who died on 4 December 1989, was inheritor of 1/6 ideal part of the total inheritance, which comprises the litigious parcels, her sisters and brothers being the inheritors of the rest of the ideal parts. Also she submitted the possession list No.66 of the cadastral zone of Kolovicë/Kojlovica dated 22 July 2003, her marriage certificate dated 24 November 1980 and S.N.’s death certificate dated 17 November 2006. Finally, she provided the judgment P. No. 86/03 issued by the Municipal Court of Prishtinë/Priština on 10 June 2007 adjudicating a lawsuit brought by herself and her sisters as claimants against their brothers T.N. and S.N.. This judgment is related to other parcels than the ones which are the subject matter of the present cases.

The Executive Secretariat of the KPA processed to the notification of the claim on 19 February 2008. Since no occupant was found, it put a poster on each parcel. Then it published the claim on 9 April 2008. No responding party approached the Executive Secretariat prior to the expiry of the 30 days deadline after the date of publication.

In parallel, the Executive Secretariat processed to the verification of the documents submitted by the claimant. This verification was positive for each of them. As to the possession list No. 66 of the cadastral zone of Kolovicë/Kojlovica, an updated version of 31 March 2008 was included in the file. It still indicated S.N. as possessor of the contested parcels.

The Kosovo Property Claims Commission (KPCC or the Commission), by the decision KPCC/D/A/22/2008 dated 28 August 2008, pursuant to section 11.3 (a) 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 and section 8.6 (a) of Annex III of Administrative Direction (AD) 2007/5 implementing UNMIK Regulation 2006/50, as amended by the same law, decided to accept M.M.'s ownership claims. As a result she was granted the repossession of the cadastral parcels 867/1 and 867/2. Also this decision ordered the respondent or any other person who might have occupied these properties to vacate them within 30 days from the day of delivery of the order. In paragraph (d) of the same decision it was decided that, if the respondent or any other person who occupied the properties failed to comply with the order, then they would be evicted. The claims for compensation for loss of use were rejected for the reason that the Commission had no jurisdiction over it.

On 19 March 2009, the claimant confirmed that she had been served with the KPCC's decision.

The current occupant of the litigious parcel was served with this decision on 21 August 2009. The receipt mentioned as addressee "Z.A."

On 15 September 2009, S.A. filed an appeal within the deadline foreseen by section 12.1 of UNMIK Regulation 2006/50 as amended by the Law No. 03/L-079 which provides that a party may submit an appeal against a decision of the Commission through the Executive Secretariat of the Kosovo Property Agency to the Supreme Court of Kosovo within thirty (30) days from the day the decision is served.

The signatures of the receipt of the notification of the KPCC's decision and of the appeal are obviously the same.

The appellant filed his appeal on the following grounds foreseen by section 12.3 of UNMIK Regulation 2006/50 as amended by the Law No. 03/L-079: fundamental violation of procedural law,

erroneous and incomplete determination of the factual situation and misapplication of the material law. He proposed that the appealed decision of the KPCC be amended and the ownership claim be rejected as ungrounded or the decision be annulled and the case returned to the Commission for retrial.

S.A. asserted that the parcels at stake were sold by S.N. to his father Z.A. in 1982 and that since that year, his father until his death on 11 November 1994 and afterwards himself he had been possessing and using this land. He added that the purchase contract had not been certified and the land had not been registered due to discriminatory laws at that time forbidding any transaction between Serbs and Albanians. He provided 4 receipts dated 22 June and 4 November 1982, 4 January 1983 and 27 February 1984 showing that a certain amount of money was given by his father to S.N. for the purchase of cultivated land with surface of 100 m² without any mention of the numbers of the sold parcels. S.A. also provided two statements, the first one signed by T.N., the second one signed by S. and N.N., respectively S.N.'s sons and grand-son, confirming the alleged purchase contract. He submitted finally the copy of the claim he filed on 7 July 2008 with the Municipal Court of Prishtinë/Priština against S. and S.N. in order to see his ownership rights recognized. According to him, these proceedings are still ongoing. This claim shows that it is related to the land parcel No. 867/1, possession list No.66 of the cadastral zone of Kolovicë/Kojlovica and to the land parcel No. 866, possession list No. 186 of the cadastral zone of Kolovicë/Kojlovica with a surface of 17.03 ares. No written purchase contract was submitted.

Although the appellee was served with the appeal on 5 November 2009, as evidenced by the receipt of the registered mail sent by the Executive Secretariat, she did not file any reply.

Legal Reasoning:

Joining the appeals:

Section 13.4 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 provides that the Supreme Court may decide upon joined or consolidated appeals where such joinder or consolidation has been decided upon by the Commission in accordance with section 11.3 (a) of the same regulation. This latter section allows the Commission to join or consolidate

claims for the purpose of their consideration and reaching decisions thereon where there are common legal and evidentiary issues to be considered.

As to the provisions of the Law on Contested Procedure No. 03/L-006 (LCP) which are applicable to the appellate proceedings before the Supreme Court according to section 12.2 of UNMIK regulation 2006/50 as amended by the Law No. 03/L-079, section 408.1, read in conjunction with section 193 foresees that appeals may be joined in one suit if such joinder contributes to the efficiency of the proceedings.

In the cases at hand, the appellant filed only one appeal, implicitly giving his consent to the joining of the cases, as provided by section 408.3 of the LCP. The appellee did not object. In addition, the Supreme Court observes that the facts, the legal grounds and the evidentiary issues are exactly the same in both cases. Only the parcels, object of the property right which is alleged in each claim, are different. The appeals are based on the same explanatory statement and on the same documentation. Moreover the KPCC's cover decision which is appealed is the same one.

Insofar as all the elements of the cases are the same but the parcels, it is obviously more efficient to join the appeals and to examine them in one single judgment.

The cases registered under the numbers GSK-KPA-A-6/09 and GSK-KPA-A-7/09 shall become one single case registered under the number GSK-KPA-A-6/09.

Admissibility of the appeals:

The Supreme Court finds out that S.A. is not allowed to file an appeal against the KPCC's decision.

According to Section 12.1 of UNMIK Regulation 2006/50 as amended by the Law No. 03/L-079, a party may submit an appeal within thirty (30) days of the notification of the decision.

Pursuant to section 10.2 of UNMIK Regulation 2006/50 as amended by the Law No. 03/L-079, a party to the claim and the related proceedings is *“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/ or any other person who may have a legal interest in the claimed property [...], provided that such person informs the Executive Secretariat of his or*

her intention to participate in the administrative proceedings within thirty (30) days of being notified of the claim by the Executive Secretariat in accordance with Section 10.1”.

Further, 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.”*

Those provisions, thus sticking to usual legal principles and notably to article 186.3 of the LCP, remind that the right to appeal belongs to a party at the first instance proceedings. More exceptionally, they provide that the lack of notification of the claim can lead the Court to admit a party with a legal interest at any point in the proceedings.

In the present case, S.A. was not a party at the first instance proceedings although he was properly notified with the claim.

S.A. did not inform the Executive Secretariat of his intention to take part in the proceedings although the notification process was made in compliance with section 10.1 of UNMIK Regulation 2006/50 as amended by the Law No. 03/L-079 which foresees that the Executive Secretariat has to make reasonable efforts to notify the claim, including publishing it. In the present case, the Executive Secretariat could not find the current occupant at the time of the notification process; thus it put a poster on the parcels containing the notification on 19 February 2008; then it published the notification on 9 April 2008.

The Supreme Court notes that S.A. has not mentioned any reason justifying that he could not have been aware of the claim. Insofar as S.A. asserts in his appeal that his late father bought the litigious parcels in 1982 and that he is in possession and in use of the litigious parcels since his father’s death that occurred in 1994, he could not have missed the posters on the parcels that he pretends to cultivate. The pictures and the sketch submitted by the Executive Secretariat show that the small parcels at hand are next to each other and are situated along a road, close to an inhabited area. They are not uncultivated parcels of forest far away from any inhabited area. While cultivating them, S.A. could find the signs visibly set up on the land.

The Supreme Court concludes that the notification was made in a way that allowed the occupant to file his defense in due time. Moreover, the Supreme Court observes that the occupant had an

additional time to do it since the 30 days deadline to reply started from the date of the publication of the claim which occurred 2 months and 10 days after the notification.

Therefore, S.A. is not entitled to file an appeal. The Supreme Court shall consider his appeal as impermissible.

Costs of the proceedings:

Pursuant to Article 8.4 of Annex III of Administrative Direction (AD) 2007/5 as amended by the 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 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 €
- court fee tariff for the issuance of the judgment on dismissing of the appeal (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 over 5.001 €: 30 €.

These court fees are to be borne by the appellant that 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