

**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-8/10

Prishtinë/Priština

12 July 2011

In the proceedings of

H.F.Z.

Appellant

vs.

R.S.M.

Claimant/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Antoinette Lepeltier-Durel, Presiding Judge, Anne Kerber and Nuredini Sylejman, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/8/2008 (case file registered at the KPA under the number KPA 33438), dated 22 February 2008, after deliberation held on 12 July 2011, issues the following:

JUDGMENT

- 1- The appeal of H.F.Z., filed on 22 November 2010 against the decision KPCC/D/A/8/2008, dated 22 February 2008, is accepted as grounded.
- 2- The decision KPCC/D/A/8/2008, dated 22 February 2008, in its part referring to the case registered with the KPA under the number KPA 33438, is quashed.
- 3- The claim filed by R.S.M. on 28 March 2007, registered with the KPA under the number KPA 33438, is rejected.
- 4- Costs of the proceedings determined in the amount of € 45 (forty five Euro) are to be borne by the appellee, R.S.M., and to be paid to the Kosovo Budget within 90 (ninety) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 28 March 2007, R.S.M., acting on behalf of her father S.M.M., filed an ownership claim with the Kosovo Property Agency (KPA), seeking for repossession of the cadastral parcel no. 274, located at the place called "Kljuç pod nasip", in the Cadastral Zone of Zakut/Zakute, with surface of 0.10.19 ha. She asserted that her father lost possession of this parcel due to the circumstances of the conflict in Kosovo on 26 March 1999.

To support her claim, she submitted a marriage certificate delivered on 26 March 2007 by the municipality of Majdanpek, Serbia, and the possession list no. 16 dated 21 June.2002, issued by the Department of Cadastre, Geodesy and Property of the Municipality of Podujevë/Podujevo, showing that the abovementioned cadastral parcel is registered under the name of S.M..

By its decision KPCC/D/A/8/2008 dated 22 February 2008, the Kosovo Property Claims Commission (KPCC) decided that S.M. was the owner of the claimed parcel and that he had the possession right over this property. The KPCC also decided that any person who illegally occupied

the property had to vacate it within 30 days of delivery of the order and in case of non-compliance, though compulsory execution. .

The claimant (henceforth: the appellee) received the KPCC's decision and submitted a request for administration of the property by the KPA on 6 February 2009.

On 22 November 2010, H.Z. filed an appeal with the Supreme Court against the aforementioned decision.

In his appeal, he maintained that the appealed decision involved a fundamental error or serious misapplication of the applicable law, stating that he could not participate in the first instance proceedings, and was taken on wrong or incomplete determination of the facts: he asserted that his father and himself purchased the litigious parcel from S.M. in 1981, paid the price which had allowed the seller to buy a tractor, but could not have registered this contract due to the discrimination laws of that time. He indicated that the written contract was burnt with his house during the war.

In support of his appeal, he provided the Supreme Court with written statements of 5 witnesses and a certificate ensuring that F.Z's house had been burnt during the war.

On 16 December 2010, the appellee filed a response to the appeal, confirming the appellant's statement.

Legal reasoning:

1- The appeal is admissible.

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.

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.”*

In the present case, neither the claim nor the KPCC's decision was served on the appellant. Therefore, the Supreme Court assumes that he filed his appeal as soon as he became aware of the claim and of the KPCC's decision. Therefore, the Court concludes that he timely filed his appeal.

Since the appellant pretends that he is the owner of the claimed property, he has a legal interest in the claim.

Thus his appeal is admissible.

2- The appeal is grounded

From the case file it results that the appellant's own statement and the statements of S.Z., M.Z., H.Z., M.Z. and S.G. are confirmed by the appellee's response submitted on 16 December 2010. The appellee has also confirmed that her father received the total amount of the sale price of this immovable property. Moreover, the appellant, with the certificate no. 08-96-07 dated 8 April 2003, issued by the Department for Reconstruction, Planning and Development of the municipality of Podujevë/Podujevo, brought the evidence that F.Z.'s house had been burnt during the war.

Furthermore, with her response to the appeal, the appellee states that since the property has not yet been registered under the name of the buyer, F.Z., and is still registered under her father's name, she authorises and even asks the buyer or his inheritor to take appropriate action for transferring the ownership to him and thus gives the approval for such action. She asserts that the sale of the cadastral parcel was completed in 1981, that the buyer built his house on it and that since then everything was correct. She indicates that it is only due to her own mistake that she included this parcel amongst others for which she filed claims with the KPA and that she is not any more in possession of the written contract due to the armed conflict during which her father and herself were forced to leave Kosovo without having been able to bring out documents.

From these confirmed statements, the Supreme Court is convinced that the cadastral parcel no. 274 of the Cadastral Zone of Zakut/Zakute, was bought by F.Z. in the capacity of buyer from S.M. in 1981, that the buyer paid completely the price of the sale contract and therefore that the obligations of the contract were forever fulfilled.

The Supreme Court accepts that the parties are unable to submit a written contract for reasons completely independent of their will.

The Supreme Court also observes that the appellee's statement means that she agrees with the appeal and no longer maintains the facts of the case as they were initially presented to the KPCC.

This is why the appealed decision no. KPCC/D/A/8/2008 was issued on the basis of an erroneous and incomplete establishment of the factual situation. As a consequence, this appealed decision is annulled and the claim filed on 28 March 2007 is rejected.

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 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 (Sections 10.21 and 10.1 of AD 2008/2), considering that the value of the property at hand, according to the evaluation given by the municipality of Podujevë/Podujevo is comprised between 1,001 and 2,500 €: 15 €.

These court fees are to be borne by the appellee that loses the case.

According to Article 46 of the Law on Court Fees, the deadline for fees payment by a person with residence or domicile abroad may not be less than 30 days and no longer than 90 days. The Supreme Court decides that, in the current case, the court fees shall be paid by the appellant within 90 days from the day the judgment is delivered to him.

Legal Advice

Pursuant to Section 13, paragraph 6 of UNMIK Regulation 2006/50, as amended by the Law 03/L-079, this judgment is final and enforceable and it cannot be challenged through ordinary or extraordinary legal remedies

Antoinette Lepeltier-Durel, EULEX Presiding Judge

Anne Kerber, EULEX Judge

Sylejman Nuredini, Judge

Holger Engelmann, EULEX Registrar