SUPREME COURT OF KOSOVO
GJYKATA SUPREME Ë KOSOVËS
VRHOVNI SUD KOSOVA

KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË KPA-ës
ŽALBENO VEĆE KAI

GSK-KPA-A-90/11 **Prishtinë/Priština,**

1 September 2011

In the proceedings of:

N.F.

Appellant/Claimant

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/AR/101/2011 (case file registered at the KPA under the number KPA 38307) dated 23 February 2011, after deliberation held on 1 September 2011, issues the following

JUDGMENT

1- **The appeal filed by N.F. on 4 July 2011 and registered under the number GSK-KPA-A-90/11 is rejected as ungrounded.**

2- **The claim filed by N.F. on 4 July 2011 on behalf of V.L., Z. and S.S. is dismissed as not allowed.**

3- **The decision of the Kosovo Property Claims Commission KPCC/D/AR/101/2011, in its part related to the case registered under the No. KPA 38307 is upheld.**

4- **Costs of proceedings determined in the amount of 45 € (forty five Euros) are to be borne by the appellant, N.F. and to be paid to the Kosovo Budget within 90 days**

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from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 29 November 2007, N.F., acting as a family household member on behalf of his mother, filed a claim with the Kosovo Property Agency (KPA) seeking to be recognized as the owner of the parcel of land No. 980, possession list of the municipality of Gjilan /Gnjilane No. 260, situated at a place called "Ciganska padina" in Parallovë/Paralovo, with surface of 0 ha 9 a 37 ca, acquired through inheritance and to be repossessed. He explained that this parcel belonged to his late mother Z.S. and that it was illegally occupied by an unknown person. He asserted that he had lost possession on 19 June 1999 as a result of the armed conflict.

To support his claim, he provided the KPA with documents related to his civil status and his parents' civil status as follows:

1- His birth certificate,
2- Copy of his identity card,
3- Death certificate of his mother, Z.S. born S.,
4- Statement signed by two witnesses asserting that Z.S., Z.S. and Z.F. are the different names of one single person,
5- Death certificate of F.S.,
6- Marriage certificate of S.P. and Z.S.,
7- Death certificate of S.S.,
8- Copy of the possession list No. 260 of the Cadastral Zone of Parallovë/Paralovo, Municipality of Gjilan/Gnjilane.

In compliance with the procedure, KPA officers went to the place where the litigious parcel was allegedly located and put up a poster indicating that the property was subject to a claim and that interested parties should have filed their response within a month. In its notification report, the KPA noted that the notification was done properly, based on "ortophoto and GPS coordinates", that the litigious parcel was not occupied and consisted of a damaged forest.

Since no respondent filed a reply within the deadline, the claim was considered as uncontested.

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The verification report of the KPA showed that the above mentioned documents related to the civil status of the claimant and of his family members and related to the parcel as well were found in and corroborated by the Municipal Civil Registry of Novobërdë /Novo Brdo and by the Cadastral Office of Gjilan/Gnjilane.

By decision issued on 23 February 2011, the Kosovo Property Claims Commission (KPCC or the Commission) dismissed the claim for lack of proof of the claimant's capacity to file a claim on behalf of the property right holder. The KPCC was not satisfied that the claimant was a family household member of the deceased property right holder due to the differences of the names appearing in the civil status certificates which hindered to prove the links between the claimant and the property right holder.

The claimant received the KPCC's decision on 8 June 2011.

On 4 July 2011, N.F. (herein after the appellant) filed an appeal with the Supreme Court against the aforementioned decision.

In his appeal, he asserted that the first instance decision involved a serious misapplication of the procedural law by not dealing with his alternative claim on behalf of his sisters. He also stated that the KPCC's decision rested upon an erroneous or incomplete determination of facts: he argued that the two different dates of birth appearing in two documents related to his mother's identity were due to the subsequent use of two different calendars in Serbia. Further, he explained that his father was born under the name S.P., that his father was then adopted by F.S. whose last name became his and that his father gave to him, as a mark of gratitude towards his own adoptive father, the name N.F.. He added that his parents were S.S. and Z.S. (maiden name S.) and had six children, himself and five daughters whose last name is S.. Finally he explained that from the birth certificate of his sister Z.N., the KPCC should have decided otherwise.

In case the Court would not be satisfied with his explanations, he asked it to recognize the property right over the parcels of any of his sisters, whose last name is not in contradiction with their mother's last name, stating that his sisters were living and working abroad.

In support of his appeal, he provided the Supreme Court with additional documentation: one of his sisters' birth certificate (Z.S. married N.).

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Legal reasoning:

Admissibility of the appeal:

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.

In the present cases, the appeal was filed by the party who was claimant during the first instance proceedings on 4 July 2011, that is to say less than 30 days after the receipt of the notification of the KPCC's decision.

Therefore, the appeal is admissible.

The merits:

1- The alleged breach of the procedural law by the KPCC:

The appellant asserts that the KPCC did not deal with his alternative claim by which he allegedly asked it to consider the ownership right's of his sisters and though committed a breach of procedural law.

However the Supreme Court, after a thorough analysis of the claim filed on 29 November 2007, finds out that such alternative claim was never filed before the KPA. It was presented for the first time within the appeal before the present court.

Therefore, this argument will be rejected.

2- The civil status issues:

As a threshold question, the Supreme Court observes that, based on the documents provided by the claimant and on the verification reports of the Executive Secretariat, the Commission has correctly assessed that the parcel, object of the claims, belonged to Z.S. who died on 3 July 1994. This fact is disputed or challenged neither by the claimant nor by the Commission.

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However, the Commission considered that the documents brought in order to prove the links between Z.S. and the claimant were not satisfactory since they contained some discrepancies.

As the Commission did, the Supreme Court notes that the death and marriage certificates of Z.S. provided different dates of birth: 27 November 1922 in the death certificate while 14 November 1922 in the marriage certificate. In those two certificates, the maiden name of Z.S., "S." and the place of birth, "Manishincë/Manišince, Prishtinë/Priština" are identical. The appellant explains that this difference is due to the subsequent use of two different calendars.

A quick research related to the calendars shows that, after the use of the Julian calendar, Serbia adopted the Gregorian calendar in 1918 and that the conversion table between the two calendars gives a difference of + 13 (thirteen) days since the year 1900. The Supreme Court observes that the two birth dates appearing in the certificates of Z.S. born S. are separated by 13 (thirteen) days and that her birth year (1922) is not long after the adoption of a new calendar by Serbia. Such concordances lead the Supreme Court to think that the explanation given by the appellant about this discrepancy should be taken seriously into consideration.

More difficult are the differences of names that hindered the Commission to ascertain the links between the claimant and the property right holder.

The first instance Commission has perfectly raised the points that question the lineage link.

The identity of the property right holder is mentioned as Z.S. in the possession list and in the certificate of immovable property that were provided to the Commission. Where they are related to the property right holder, the civil status documents that were brought by the claimant bear the following names: Z.S. in her marriage certificate, Z.S. born S. in her death certificate, Z.S. in her husband's death certificate. The marriage certificate shows that the groom is called S.P. while he is called S.S. in his own death certificate (same birth date and same first names of the parents) and his wife's death certificate. However none of these documents matches with the appellant's civil status documents: the appellant's birth certificate and his identity card mention only his name as being N.F.. In his birth certificate, his parents appear to be S.F. and Z.F. respectively born in Zebincë/Zebince and Manishincë/Manišince. Unfortunately, his parents' birth dates and personal identification numbers are not indicated. Even if the probability to find several couples whose first names are S. born in Zebincë/Zebince and Z. born in Manishincë/Manišince could be weak, it remains the possibility that other parents having these first names and born in these places existed. Therefore

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such indications cannot constitute the sufficiently strong proof of a lineage link between the appellant and the property right holder.

Further, the appellant asserted that the last name F. was given to him as a mark of gratitude towards his grand-father who adopted his father. Indeed, the death certificate of the alleged grand-father, F.S., bears F. as first name. Nevertheless, although this constitutes a possible explanation of the discrepancies, it does not eliminate other possibilities and therefore does not prove with the required certitude why there is no mention of the name S. besides the given name of F. as alias, why there is no mention of birth dates or/and of personal identification numbers of the appellant's parents in his birth certificate.

The Commission was not provided with the birth certificate of Z.N., the appellant's sister. This additional document was only submitted with the appeal. As a consequence, it cannot be asserted that the KPCC failed to consider all the evidence.

As to this additional document that the appellant brought with his appeal, one of his alleged sisters' birth certificate, it does not allow proving the litigious link between the appellant and the property right holder. It is related to Z.N. born S., from S.S. and Z.S., S.. The Supreme Court observes that, on the contrary to what was done on the appellant's birth certificate, the parents' birth dates are indicated in this birth certificate. Such mention which contributes to clarify the complete identification of the parents is surprisingly missing in the appellant's birth certificate whereas it is indicated in the other one.

The appellant also provided the Executive Secretariat with a statement signed by two witnesses asserting that Z.S. born S. and Z.F. were names of one and the same person. The Supreme Court has to examine whether the statements written by witnesses could constitute adequate evidence of the lineage link in the present case. Section 3.1 of UNMIK Regulation 2006/50 as amended by the Law No. 03/L-079 limits the competence of the KPCC and of the Supreme Court dealing with appeals against KPCC's decisions to the resolution of conflict related ownership claims. The question of the lineage links of the claimant/appellant is a matter raising the issue of the establishment of maternity or of the correction of civil status acts or of inheritance, all legal issues falling under the jurisdiction of other courts or administrative bodies and submitted to specific proceedings. It is only through such procedures that a competent court or administrative body may assess the strength and the validity of testimonies to establish the maternity link and/or to correct the discrepancies in the appellant's civil status. The Supreme Court in its function of Court of Appeal against the

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Commission's decisions has to check whether a party has the required capacity to act before it but it should be beyond the scope of its jurisdiction to solve the question related to the establishment of a lineage link.

The Executive Secretariat tried to clarify the family links between the appellant and Z.S., by asking several times for additional documents and by seeking whether the civil registry books contained more information, amongst them personal identification number. These attempts failed.

Having regard to all these factors, the Supreme Court considers that the Commission has lawfully decided that there was no satisfactory proof of the lineage link between the claimant and the property right holder and, as a result, that the claimant was not entitled to act as a family household member of Z.S..

3- The claim filed by the appellant on behalf of his sisters: V., L., Z. and S.S. :

The appellant formulated a new claim with his appeal, asking the Supreme Court, in case it would not have been convinced that he is Z.S.'s son, to recognize anyone of his sisters' ownership rights over the parcels, stating that they do not suffer from the same discrepancies of their civil status documents. He added that his sisters were living and working abroad, implicitly acting on behalf of them as a family household member.

The Supreme Court finds that, for the same reasons that the appellant is currently unable to prove his quality of family household member vis-à-vis the property right holder, he cannot prove the family link between him and his alleged sisters.

Moreover, such claim appears to be inadmissible. Filing an additional claim means amending the claim. According to articles 258.1 and 258.2 of the Law 03/L-006 on Contested Procedure, a claimant may amend the claim no later than the conclusion of the main hearing at the first instance level. In case there is no hearing at the first instance level, it is clear that amendment of a claim should be done before the deliberation session so that it could be examined by the first instance court. Nevertheless, it cannot be done for the first time before the second instance court.

In addition, the Supreme Court finds that anyway the appellant is not entitled to act on behalf of his sisters. Section 5.2 of UNMIK Administrative Direction (AD) No. 2007/5 as amended by the Law No. 03/L-079 reads:

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"*In proceedings before the Commission, where a natural person is unable to make a claim, the claim may be made by a member of the family household of that person*."

Section 1 of the same AD defines the "*member of the family household*" as "*the spouse, the children and other persons whom the property right holder is obliged to support in accordance with the applicable law, or the persons who are obliged to support the property right holder in accordance with the applicable law, regardless of whether or not that person resided in the property together with the property right holder."*

Neither the evidence of any inability of the alleged sisters to make a claim nor the elements corresponding to this definition are met in the case at hand.

As a result, this claim is inadmissible and shall be dismissed. This decision does not hinder the persons on behalf of whom the appellant acted, to file a claim before the regular and competent courts.

Consequently, based on all the above legal reasoning, the decisions of the KPCC shall be upheld.

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, composed of 0 ha 9 a 37 ca of damaged forest in the cadastral zone of Parallovë/Paralovo could be reasonably estimated as being less than 1.000 €: 15 €.

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

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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 13.6 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

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