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-095/12 **Prishtinë/Priština, 17 January 2013**

In the proceedings of:

H. V.
P./P.

Appellant

vs.

M. J.
M.a 55
34000 K.
S.

Claimant/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Anne Kerber, Presiding Judge, Elka Filcheva-Ermenkova and Sylejman Nuredini, Judges, on the appeal against the decisions of the Kosovo Property Claims Commission KPCC/D/A/119/2011 (case files registered at the KPA under Nos. KPA24978, KPA24981, KPA24985, KPA24986, KPA24987 and KPA24988), dated 7 September 2011, KPCC/D/A/19/2008 (case file registered at the KPA under No. KPA24979), dated 20 June 2008, and KPCC/D/R/21/2008 (case file registered at the KPA under No. KPA24980), dated 20 June 2008, after deliberation held on 17 January 2013, issues the following

JUDGMENT

1- **The appeal of H. V. against the decision of the Kosovo Property Claims Commission KPCC/D/A/19/2008, dated 20 June 2008, as far as it regards the case registered at the KPA under No. KPA24979 is dismissed as impermissible.**

2- **The appeal of H. V. against the decision of the Kosovo Property Claims Commission KPCC/D/R/21/2008 of 20 June 2008 and against the decision of the Kosovo Property Claims Commission KPCC/D/A/119/2011 of 7 September 2011 is rejected as unfounded.**

3- **The decision of the Kosovo Property Claims Commission KPCC/D/R/21/2008 of 20 June 2008, as far as it regards the case registered at the KPA under No. KPA24980, and the decision of the Kosovo Property Claims Commission KPCC/D/A/119/2011 of 7 September 2011 as far as it regards the cases registered at the KPA under Nos. KPA24978, KPA24981, KPA24985, KPA24986, KPA24987 and KPA24988, is confirmed.**

4- **The appellant has to pay the costs of the proceedings which are determined in the amount of € 55 (fifty-five) within 15 (fifteen) days from the day the judgment is delivered or otherwise through compulsory execution.**

Procedural and factual background:

On 1 March 2007, M. J. in his capacity as a family household member of the property rights holder filed eight claims with the Kosovo Property Agency (KPA), seeking confirmation of property rights, repossession and compensation for unauthorized usage. He explained that his late father had been the owner of the properties, that they had been lost on 13 June 1999 and that the loss was the result of the circumstances in 1998/1999 in

Kosovo.

The data of the claimed parcels, all registered in Possession List No. 29 of Podujevë/Podujevo, cadastral zone Bajqina/Bajčina, issued on 25 December 2001, are the following:

Number of appeal and KPA case file	Data of the parcels
GSK-KPA-A-095/12 (KPA24978)	Parcel No. 1063, at a place called "Zharina-Zharina", a 5th class meadow with a surface of 12 ar and 7 m^2;
GSK-KPA-A-096/12 (KPA24979)	Parcel No. 1072, at a place called "Zharina-Dvorishte", a 4th class meadow with a surface of 3 ar and 40 m^2;
GSK-KPA-A-097/12 (KPA24980)	Parcel No. 1072, at a place called "Zharina-Dvorishte", a (destroyed) house with a surface of 63 m^2 and associated land with a surface of 5 ar;
GSK-KPA-A-098/12 (KPA24981)	Parcel No. 1073, at a place called "Zharina-Zharina", a 3rd class orchard with a surface of 8 ar and 58 m^2;
GSK-KPA-A-099/12 (KPA24985)	Parcel No. 1319, at a place called "Zharina-Rushulak", a 2nd class orchard with a surface of 1 ar and 60 m^2;
GSK-KPA-A-100/12 (KPA24986)	Parcel No. 1326, at a place called "Zharina-Rushulak", a 2nd class garden with a surface of 4 ar and 19 m^2;
GSK-KPA-A-101/12 (KPA24987)	Parcel No. 1330, at a place called "Zharina-Rushulak", a 3rd class field with a surface of 7 ar and 83 m^2;
GSK-KPA-A-102/12 (KPA24988)	Parcel No. 1335, at a place called "Zharina-Rushulak", barren land with a surface of 3 ar and 39 m^2;

To support his claim, the claimant provided the KPA with the following documents:

- Copy of Possession List No. 29 issued by the Republic of Serbia, Centre For Cadaster and Immovable Property Pristina, Department for Immovable Property and Cadaster Podujevo for the Municipality of Podujevo, Cadastral Municipality Bajcina, on 25 December 2001, showing that the litigious property was registered for J. S. M., Bajqina/Bajčina;
- Birth Certificate issued by the Republic of Serbia for the Municipality of Podujevë/Podujevo in Niš on 13 January 2005, showing that the claimant was born in Bajqina/Bajčina as the son of M. J.;

- Death Certificate issued by the Republic of Serbia for the Municipality of Zemun in Belgrade on 15 January 2007, showing that M. J. had died on 12 October 1990.

The KPA could verify Possession List No. 29 as it found Possession List No. 29 issued by UNMIK on 20 November 2007, showing that the property was registered in the name of M. (S.) J.

In 2007 and 2008 KPA officers went to the places where the parcels were allegedly situated and put up signs indicating that the property was subject to a claim and that interested parties should have filed their response within 30 days.

As nobody responded, the KPCC treated the cases as uncontested and with its decision KPCC/D/A/19/2008 of 20 June 2008 granted the claim in cases KPA24978, KPA24979, KPA24981, KPA24985, KPA24986, KPA24987 and KPA24988; with its decision KPCC/D/R/21/2008 of 20 June 2008 it granted the claim in case KPA24980. The claims for compensation were dismissed as being out ot the jurisdiction of the KPCC.

Later on the notifications were checked based on the cadastral map, orthophoto and GPS coodinates. In cases KPA24979 (decision KPCC/D/A/19/2008, court case file GSK-KPA-A-096/12) and KPA24980 (decision KPCC/D/R/21/2008, court case file GSK-KPA-A-097/12) the notification was found to be accurate. In the other cases the KPCC invalidated its decision. The notification was repeated in 2010 by publishing the claim in the KPA Notification Gazette No. 7 and the UNHCR Property Office Bulletin. The publications were placed at the entrance and the exit of Bajqina/Bajčina and also left with the head of the village who accepted to make it available for interested parties. Gazette and Bulletin also were left with different other public institutions (UNHCR, Ombudsperson, Muncipal Court of Podujevë/Podujevo etc).

With its decision KPCC/D/A/119/2011 of 7 September 2011 the KPCC again granted the claims for repossession yet dismissed the claims for compensation.

On 7 June 2012, H. V. (the appellant) filed an appeal against the decisions related to all eight KPA-cases. He declared that the property was the property of his family. To support this allegation, he submitted copies from case file C.Nr. 682/58 of the District Court of Prishtinë/Priština, the case of Mehmet Gashi and others against M. J. and others who used the claimed property. The case file contained a decision of the Sharia District Court of Podujevë/Podujevo of 6 July 1931, with which a dispute between members of the V. family and members of the J. family about several parcels was referred to the regular civil court. Furthermore the

case file contained a decision of the Appellate Court of Skopje – Nr. 5384 of 27 July 1948 – with which the case was sent back to the District Court of Prishtinë/Priština for retrial, the minutes of case No. 682/58 as well as the decision No. G.682/58 itself, issued on 29 December 1960. The judgment explains that the claimants alleged that they were the owners of different properties described in the judgment. Sometime between 1912 and 1914 there had been negotiations between their and the respondents' predecessors about the purchase of certain properties described in the decision. The claimants, however, stated that the properties never were sold and the respondents had usurped them. The District Court refused the claim. The Court decided that the respondents were the rightful owners of the properties as their predecessor, S.J., had bought these from the claimant's predecessor, V. and, in addition, had used it without interruption since 1918 ("after the occupation"), that is more than 40 years.

The claimant (from here on: the appellee) responded to the appeal, stating that it was impermissible and if the court nevertheless wanted to respond to the appeal it was ungrounded as the decision of the District Court was in favour of the appellee's predecessors. Furthermore, the appellee's predecessors and himself had had possession of the parcels until 1999, that is almost 40 years since the decision of the District Court.

The Supreme Court has joined the cases.

Legal reasoning:

I. Case KPA24979

The appeal in case KPA24979 is impermissible as the appellant has not taken part in the proceedings before the KPA.

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. Section 10.2 of the Regulation provides: "*Any person other than the claimant […] shall be a party to the claim and the related proceedings, 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 the present case, the appellant did not inform the Executive Secretaritat of his intention to participate in the proceedings. The appellant does not give any explanation for this omission.

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*".

Therefore, the Supreme Court has to check whether the appellant was notified with the claim. The way to notify of a claim in this procedure is foreseen by section 10.1 of UNMIK Regulation 2006/50 as amended by the Law No. 03/L-079. According to this provision, the Executive Secretariat has to notify the claim to any person other than the claimant who is currently exercising or purporting to have rights to the property or to make reasonable efforts to notify the claim to any person who may have a legal interest in the property.

In the case at hand, the Executive Secretariat notified of the claim by setting up a poster on the parcel in October 2007. This measure constitutes reasonable efforts to properly notify of the claim. Furthermore, nothing indicates that the appellant could not have been aware of the notification.

From all the above mentioned elements, the Supreme Court holds that the appellant had the opportunity to be aware of the proceedings and to file his defense at the first instance level. As he did not reply to the claim within the deadline and as he was not a party before the KPCC, he is not any more allowed to appear before the Supreme Court for filing an appeal. Thus his appeal shall be dismissed as impermissible pursuant to section 13.3 (b) of UNMIK Regulation 2006/50 as amended by the Law No. 03/L-079 (see also article 196 and 195.1 (a) of the Law on Contested Procedure).

The Court wants to add that even if the appeal had been admissible it would yet have been ungrounded as the reasoning below - on the merits – also applies to this case.

II. Cases KPA24978, KPA24980, KPA24981, KPA24985, KPA24986, KPA24987 and KPA24988

a. Admissibility

The appeal in these cases is admissible even though the appellant had not been a party to the procedure before the KPA/KPCC.

The Court notes that in case KPA24980 (KPCC/D/R/21/2008 of 20 June 2008) the

notification was done by putting up a sign. The notification was checked and allegedly was correct, even though the sign was put not in the parcel but 11 m apart from it. The Court does not agree with the opinion that a sign put up 11 m apart from the claimed parcel can notify correctly of the claim. The persons occupying the parcel have no reason – besides mere curiosity – to concern themselves with signs put 11 m outside the occupied parcel. Without proper notification, however, the Court cannot assume that the appellant was aware of the claim. Therefore the fact that the appellant had not informed the Executive Secretariat of his intention to take part in the proceedings and had not been a party in the proceedings cannot be hold against the appellant.

In the other cases, KPA24978, KPA24981, KPA24985, KPA24986, KPA24987 and KPA24988 (KPCC/D/A/119/2011 of 7 September 2011), the notification was done by publication of the claim in the Notification Gazette of the KPA and the UNHCR Bulletin. This, however, constitutes "reasonable efforts" as required by section 10.1 of the regulation only in exceptional cases. Such an exception cannot be found in this case. As the Court cannot exclude that the appellant was not aware of the claims, he has to be accepted as a party to the proceedings, his appeal is admissible.

The Court decides on the cases as all information necessary for the decision is provided.

b. On the Merits

The appeal is ungrounded. The decision of the KPCC is correct, the Court finds neither incomplete establishment of facts nor erroneous application of the material or procedural law.

The Court first wants to note that the case falls in the scope of jurisdiction of KPCC and KPA Appeals Panel. The case is directly related to the armed conflict in Kosovo. The appellee states that the parcels had been in his possession until 1999 and were lost only during the armed conflict. The appellant does not question this but only alleges that the property "was ours".

The KPCC correctly assessed the facts and decided that the appellee had proven that M.J. was the owner of the property. The property is registered under the name of M. J..

The appellant has submitted no evidence that could lead to another decision. The Court has taken into consideration all the documents submitted by the claimant. The Court first notes, that there is a certain probability that the property disputed in this case before the District Court of Pristinë/Priština at least includes part of the property disputed in the cases here. At least no party claims otherwise. Yet, even if assumed that the property is the same, there is nothing which could lead to the legal conclusion that the property belonged to the family of the appellant. The decisions of the Shariah District Court of Podujevë/Podujevo of 6 July 1931 and the decision of the Appellate Court of Skopje – Nr. 5384 of 27 July 1948 – do not go into the merits of the case. The minutes with the statements of the witnesses/parties are not deciding on the dispute. The judgment of the District Court of Prishtinë/Priština No. G.682/58 itself, issued on 29 December 1960, however, indicates exactly the opposite of the allegations of the appellant. With this judgment the District Court decided that the property did not belong to the family of the appellant but to the family of the appellee, J.

The register of the case file, however, shows that there was an appeal against this judgment, a decision regarding this appeal and apparently a revision. The appellant, however, did not provide the Court with these decisions. He also was aware of the fact that these were not submitted as he signed a list of the submitted documents which does not contain these judgments whereas it contains the decision of the District Court. It was therefore not necessary for the Court to inform the appellant that these decisions were not included. The Court also finds no reason to search for these decisions ex officio as it has to assume that the registration of the parcels would be in the name of a member of the appellant's family if the decisions would have been in favour of this family. Also the parcels would have been in possession of the family of the appellant after the final judgment. The appellant, however, does not allege that the parcels between about 1920 and 1999 ever have been in possession of his family, he just states that his family owns them and gives as evidence that both families had a dispute over property (which could include these parcels) during the 1960ies.

After all that the Court does not find that the appellant succeeded in shaking the evidence which indicated the appellee's father as the owner of the property.

The Court wants to add that with the District Courts decision of 29 December 1960 the property was given into the possession of the appellee's family – the decision even says that the property was in possession of the appellee's family since 1914 with an interruption only during the occupation in World War I, during which it was used by the family of the

appellant. As according to Article 28.4 of the Law on Basic Property Relations (Official Gazette SFRY, No. 6/80) the trustful holder of a real estate acquires the property right after twenty years, the appellant's father – even without the decision of the Court, would have acquired ownership by adverse possession (by himself and probably his legal predecessors). This is also according to article 40.1 of the Law on Property and Other Real Rights (OG of the Republic of Kosovo of 4 August 2009), which provides: "*A proprietary possessor acquires ownership of an immovable property, or a part thereof, after twenty (20) years of uninterrupted possession*",

Costs of the proceedings:

Pursuant to Annex III, Section 8.4 of AD 2007/5 as amended by Law No. 03/L-079, the parties are exempt 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
- court fee tariff for the issuance of the judgment (10.21 and 10.1 of AD 2008/2), considering that the value of the property on which the Court decided on the merits could be reasonably estimated as being comprised at € 4.500: € 25 .

These court fees are to be borne by the appellant who loses the case. According to Article 45 Paragraph 1 of the Law on Court Fees, the deadline for fees' payment is 15 days. Article 47 Paragraph 3 provides that in case the party fails to pay the fee within the deadline, the party will have to pay a fine of 50% of the amount of the fee. Should the party fail to pay the fee in the given deadline, enforcement of payment shall be carried out.

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.

Anne Kerber, EULEX Presiding Judge

Elka Filcheva-Ermenkova, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar