

**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-150/11

Prishtinë/Priština, 15 March 2012

In the proceedings of:

B.M.S.

Claimant/ Appellant

vs.

L.G.

Respondent/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Anne Kerber, Presiding Judge, Elka Ermenkova and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/85/2010 (case file registered at the KPA under No. KPA06330), dated 2 September 2010, after deliberation held on 15 March 2012, issues the following

JUDGMENT

- 1- The appeal of B.M.S. is rejected as unfounded.
- 2- The decision of the Kosovo Property Claims Commission KPCC/D/A/85/2010, dated 2 September 2010, as far as it regards the case registered under No. KPA06330, is confirmed.
- 3- The appellant has to pay the costs of the proceedings which are determined in the amount of € 330 (€ three hundred thirty) within 15 (fifteen) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 10 January 2007, B.M.S. filed a claim with the Kosovo Property Agency (KPA), seeking to be recognized as the owner of a property located in Firzë/Firza in Gjakovë/Đakovica, parcel No. 82, a 4th class meadow with a surface of 1 h 7 ar 30 m², and claiming repossession. He explained that he had acquired the land by inheritance, had lost it on 13 June 1999 and that the loss was the result of the circumstances 1998/1999 in Kosovo. He stated that M.G. from Firzë/Firza on one part of the parcel illegally had built a house. To support his claim, the claimant provided the KPA with the following documents:

- Cadastral Decision No. 952-01-1/98-53-C, issued on 17 February 1998 by the Cadaster Service for Immovable Property in Gjakovë/Đakovica, by which the claimant's right to use the claimed property could be registered as private property;
- Possession List No. 128, issued by the Municipality of Gjakovë/Đakovica , Cadastral Zone Firzë/Firza, on 25 April 2005 (UNMIK), showing that B.S. was in possession of the litigious parcel No. 82.

The submitted Possession List No. 128 could be verified, the verification of the cadastral decision was not deemed necessary by the KPA.

On 30 October 2008, the KPA notification team went to the place where the claimed parcel allegedly was located and put up a sign indicating that the property was subject to a claim and that interested parties should have filed their response within 30 days. The property was found occupied by L.(M.)G. (the respondent) who claimed a legal right to the property which, he declared, had been bought by his late father M.G. from the claimant. He provided the KPA with a written contract according to which three sellers, amongst them the claimant, sold parcel No. 82 to P.D. (the respondent's uncle) from Firzë/Firza for the amount of 85.000 German Marks. The contract was dated 26 December 1997, 45.000 DM should be paid on the day of the conclusion of the contract, the remaining 40.000 DM should be paid until 1 August 1998. The respondent stated that he used the property since 26 December 1997.

On 5 April 2010, a KPA officer contacted the claimant (obviously by phone). The claimant confirmed that he received 45.000 DM from P.G. for the claimed property, but that the remaining 40.000 DM had not been paid to him till now. The claimant furthermore confirmed that he moved to Kruševac in 1997 because his son had died and that from this time on he had not used the litigious property.

On 2 September 2010, the Kosovo Property Claims Commission (KPCC) with its decision KPCC/D/A/85/2010 dismissed the claim as it did not fall within the jurisdiction of the KPCC and referred the case to the competent local court, administrative board or tribunal according to Section 8.1 of Annex III of Administrative Direction 2007/5 as amended by Law No. 03/L-079.

The decision was served on the claimant on 25 August 2011. On 14 September 2011, the claimant (henceforth: the appellant) filed an appeal with the Supreme Court, challenging the KPCC's decision on the grounds of serious misapplication of the applicable material and procedural law and erroneous and incomplete determination of the facts.

The appellant declared that he had signed the informal sales contract concerning parcel No. 82 with L.G. on 27 December 1997. The sales price had been 85.000 DM of which only 45.000 DM had been paid. Furthermore, he stated that he had had no contact with L.G. after the payment of the 45.000 DM and had not requested more money that the parties had agreed upon. The appellant declared that he had not requested more than the 40.000 DM. He informed the Supreme Court that now he wanted to come to an agreement with the L.G..

He added that he had never moved to Kruševac but had stayed there only temporarily in 1998, due to the serious illness of his brother. After his brother's death he had come back to Gjakovë/Đakovica where he lived until June 1999 when he left because of the unsecure situation in Kosovo.

The appellant informed the Court that he had not used the property since 27 December 1997 because of the sale and that he had not obstructed the use of L.G. because he had thought that the contract would be fulfilled.

The appellant requests that the appeal shall be resolved in his favour, that the decision of the KPCC be quashed and his property right be recognized.

The appeal was served on the respondent (henceforth: the appellee) on 6 October 2011. The appellee did not react.

Legal reasoning:

The appeal is admissible. It has been filed within the period of 30 days prescribed in Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079.

However, 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 case is not within the jurisdiction of the KPCC.

According to Section 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, a claimant is entitled to an order from the Commission for repossession of the property if the claimant not only proves ownership of private immovable property, but also that he or she is not now able to exercise such property rights by reason of circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.

In this case, however, the appellant has not proven that he is restrained from exercising the claimed ownership right because of the armed conflict of 1998/1999. On the contrary, the facts given by the appellant in his appeal clearly show that he already had given up the use of the property on 27 December 1997, the reason therefore being the sale. Therefore, the conflict of 1998/1999 was not the reason for the loss of the claimed property. Accordingly, the claim is not within the jurisdiction of the KPCC.

Because of the lack of jurisdiction, the Court has not to decide whether the appellant is the owner of the claimed property or not. Therefore, the decision of the Court is without prejudice to the decision of a competent court.

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 at hand could be reasonably estimated as being comprised at € 50.000: € 300 (€ 50 + 0,5% of € 50.000).

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

Sylejman Nuredini, Judge

Elka Ermenkova, EULEX Judge

Urs Nufer, EULEX Registrar