

**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-152/11

Prishtinë/Priština, 31 May 2012

In the proceedings of:

M.A.

Respondent/Appellant

vs.

V.K.G.

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 decision of the Kosovo Property Claims Commission KPCC/D/A/85/2010 (case file registered at the KPA under the number KPA29907, dated 2 September 2010), after deliberation held on 31 May 2012, issues the following:

JUDGMENT

- 1- The appeal of M.A. 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 relates to the case registered under the number KPA29907, is confirmed.
- 3- The appellant has to pay the costs of the proceedings which are determined in the amount of € 80 (€ eighty) within 90 (ninety) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 18 May 2007, V.G. filed a claim with the Kosovo Property Agency (KPA) seeking to be recognized as the owner of the cadastral parcel No. 406 at the place called "Selo" (Selo/Fshat) with a surface of 0.04.10.ha, cadastral zone of Potočan i Poshtëm/Donji Potočan, registered in the Possession List No.109 issued by the Directorate of Cadastre, Geodesy and Property, dated 20 April 2010.

In the claim form signed by the claimant, he stated that he is the owner of the claimed immovable property, seeking repossession of the parcel. In the claim form recorded in KPA under number KPA29907, he states the following: "By signing this form, the claimant establishes that his/her property right is related to the immovable private property that was lost as a result of the circumstances in 98/99 in Kosovo.

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

- Possession List No. 109 issued by the Directorate of Cadastre, Geodesy and Property, dated 20.04.2010 issued by the Municipality of Rahovec/Orahovac;
- ID card, No.50268, dated 17 February 1992.

Possession List No. 109 confirms that the claimant is the property right holder. From the KPA verification report, dated 21 February 2008, it is ascertained that the cadastral parcel no. 406, according to this Possession List, is in the name of G.V..

On 10 November 2008, the respondent M.A., who is currently using the immovable property at stake, signed a notification for participation in KPA proceedings and requested to have his property right over this immovable property recognized, claiming that he bought the said immovable property.

To support his claim on the private property, he submitted to KPA the following evidence:

- Sale contract on immovable property certified by the Municipal Court of Rahovec Ev.nr. 718/74 dated 30 December 1974, whereby H., H., A., S., Q. Ç. were in the capacity of sellers, whereas, M. and X. A. were in the capacity of buyers of the cadastral parcel 407 with surface of 0,30,43 ha, 2 class meadow of cadastral zone of Potočan i Poshtëm/Donji Potočan;
- Judgment based on confirmation C.nr. 137/88 dated 09 April 1988 rendered by the Municipal Court of Rahovec/Orahovac, which refers to the cadastral parcel 407 at the place called “fshat” with a surface of 0. 30, 43 ha.

The respondent has not provided valid evidence and failed to prove his right of ownership over parcel no. 406 which is the subject matter of the claim

In 2008, the KPA notification team went to the place where the claimed parcel were allegedly located and put up signs indicating that the property was subject to a claim and that interested parties should file their response within 30 days. The entire property was found occupied by M.A. from the village of Potočan i Ulet/Donji Potočan who claimed a legal right to it. The notification was checked by GPS and orthophoto later on in the proceedings in 2010 and was found to have been correct.

Based on the KPCC claim processing report, dated 03.08.2010, it is ascertained that the notification for the claim on the immovable property was done on 06.02.2008, whereas it was published on 04.03.2008. Referring to the chapter of information on the respondent, it is indicated that the respondent reported on 16 April 2010, claiming to be the property right holder.

On 2 September 2010, with its decision KPCC/D/A/85/2010 dated 02.09.2010 the Kosovo Property Claims Commission (KPCC) established the property right over the claimed parcel and the

claimant and given the possession of it. Also, in the appealed decision it was decided that the respondent who has illegally occupied the property has to vacate it within 30 days of the receipt of the order otherwise if he fails to comply with the order for vacating the property within the given deadline this will be done through forcible execution.

In addition, in the appealed decision it is decided that the property right holder was not able to exercise his property right over the parcel. The impossibility to exercise such right in the said property is conflict-related in the sense that involves circumstances directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999.

The decision was served to the claimant on 25 August 2011, whereas the decision was served to the respondent 22.08.2011. On 15 September 2011, the respondent M.A. (henceforth: the appellant) filed an appeal with the Supreme Court, challenging the KPCC's decision on the grounds of erroneous and incomplete determination of facts and the erroneous application of the material law. In his appeal the respondent claims that he bought the cadastral parcel 406 called "Selo" (Selo/Fshat) with a surface of 0.4,10 ha, cadastral zone of Potočan i Poshtëm, from M., H. and H. Ç. and that the latter bought this immovable property from D.K.G. upon the consent of his brother V., the claimant of the private property, but failing to submit any legally valid evidence. Statements by M., H. and H. Ç. are herein enclosed to this appeal.

On 31 October 2011, the claimant responded to the appeal, stating that he did not sell to anyone the cadastral parcel 406 and that the same is evidenced under his name according to Possession List 109 issued by the Directorate of Cadastre, Geodesy and Property of the Municipality of Rahovec/Orahovac and that the immovable property was lost in 1999.

Respondent claim that ownership right is acquired through adverse possession pursuant to Article 28 of Law on Basic Property Relations ("Official Gazette SFRY, No. 6/80") are unlawful, because they could have not acquired this ownership in legal way and good faith.

The appellant requests to reverse the KPCC decision and to reject the claim.

The claimant-appellee proposes to reject the appeal and confirm the KPCC decision, considering that this is a legal and fair decision.

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.

Following the consideration and assessment of the case file, the appealed decision and the appellant's claims, pursuant to Article 194 of KCP, the Supreme Court found that the appeal is ungrounded.

The Supreme Court finds that the decision was taken in full and just determination of factual situation and rightful application of the material law, respectively in compliance with Article 20 of Law on Basic Property Relations ("Official Gazette SFRY, No. 6/80"). The appealed decision does not contain essential violations of Article 182 para 1 and 2 of LCP which have an impact on the justness and legality of this decision.

The Supreme Court finds that the KPCC with its decision gave full and clear explanations and clarifications on decisive facts applicable for a legal and fair decision.

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 a reason directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999, thus the claimant gave sufficient reasons and evidence on his impossibility to exercise such property rights, which has not been challenged by the respondent.

The appellant's allegation that he bought the immovable property from the predecessors of Ç.'s family are not supported by any facts or evidence administered during the proceedings conducted before the KPCC. Also, in the appellate procedure he did not propose any relevant fact or evidence in order to confirm that he validly acquired his right of ownership.

This is due to the fact that pursuant to Article 20 of Law on Basic Property Relations ("Official Gazette SFRY, No. 6/80") the following legal conditions are necessarily required to be met to acquire the immovable property:

- Ownership of previous owner,
- Legally valid affairs, and
- The manner of ownership transfer.

The respondent-appellant failed to establish the fact that he bought the cadastral parcel 406 in the cadastral zone of Potočan i Poshtëm/Donji Potočan and he did not register the same in the cadastral records under his name; consequently under such factual situation his ownership cannot therefore be admitted. Furthermore, the appellant's allegations that they acquired the ownership right over the contested parcel 406 based on adverse possession by using the same since 1974 are not admissible and accepted.

This is precisely due to the fact that to acquire the ownership by adverse possession under Article 28 of Law on Basic Property Relations ("Official Gazette SFRY, No. 6/80") the existence of a valid legal affair is required, namely a written contract (legal possession) and possession in good faith which provides that he was not aware or he could have not been aware that the property under his possession was not his own. This is due to the fact that the cadastral parcel 406 called "Selo" (Selo/Fshat) - a meadow with a surface of 0. 04, 10 ha still registered in the the name of claimant therefore, it cannot be said that he was not aware that the property was not his own. Moreover, the appellant claims that they had bought this property from D.K.G. and not from V.K.G., by mentioning that they gained the consent for sale from V., but failed to offer any evidence.

Consequently, in the light of above the appeal of M.A. is unfounded.

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 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 (10.21 and 10.1 of AD 2008/2), considering that the value of the property at hand could be reasonably estimated up to € 10000, which is € 50 for court fee.

These court fees are to be borne by the appellant who 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 30 days from the day the judgment is delivered to him. Article 47.3 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 Filcheva - Ermenkova, EULEX Judge

Urs Nufer, EULEX Registrar