

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-149/11

Prishtinë/Priština, 1 November 2012

In the proceedings of

A.R.S.

Respondent/Appellant

vs

D.R.

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/102/2011 (case file registered at the KPA under the number KPA24692), dated 23 February 2011, after deliberation held on 1 November 2012, issues the following

JUDGMENT

- 1- The appeal of A.R.S. against the decision of the Kosovo Property Claims Commission KPCC/D/A/102/2011 (case file registered at the KPA under the number KPA24692) is dismissed as impermissible.

- 2- Costs of the proceedings determined in the amount of € 37,50 (thirty-seven point fifty) are to be borne by the appellant and have to be paid to the Kosovo Budget within 15 (fifteen) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 21 February 2007, D.R. as a family household member of the property right owner filed fourteen claims with the Kosovo Property Agency (KPA), seeking repossession and compensation for the unlawful use of the claimed parcels. She explained that her late father had been co-owner of the parcels which had been usurped by an unknown person. By signing the claims form, D.R. declared that the property was lost on 12 June 1999. In this case, only one parcel is concerned: Parcel No. 2981, pasture located at a place called “Suvi Do” in Dumnicë e Poshtme/Donja Dubnica, Podujevë/Podujevo, with a surface of 0 h 07 ar 70 m². The case was registered at the KPA under the number KPA24692.

After the interested parties had been notified of the claim – either by putting up signs indicating that the property was subject to a claim or by publication in the KPA Gazette – J.S., who as – allegedly – director of the cooperative P. already had been present at several of the notifications, responded to the claims. J.S. also submitted to the KPA a response of A.R.S., dated 25 September 2007. With this document A.S. responded to the claims registered under KPA 24689, KPA24674, KPA24632, KPA24680, KPA24681, KPA24688, KPA24685, KPA24634, KPA24354, KPA24692 and KPA24699. He declared that a part (4 ha) of the litigious parcels had been the land of his grandfather since 1952 and that he had cultivated this land since 1980. He also stated that the documents regarding this land had been burned in 1999.

On 23 February 2011, the KPA with its decision KPCC/D/A/102/2011 rejected the claims of D.R. as the claimant had been unable to establish the existence of a private property right over the properties in the name of her father.

The decision was served on the claimant on 14 October 2011, on A.S. on 6 July 2011.

On 31 August 2011, the respondent A.S. (henceforth: the appellant), filed an appeal with the Supreme Court, regarding case KPA24692. He challenged the decision for reason of violation of the material and procedural law and for erroneous and incomplete determination of facts and requested that the challenged decision be reversed and his ownership right be recognized. He declared that his family had used 4 ha of the property [with this he apparently missed that the property covered by case KPA24692 was smaller than that.

The appeal was served on D.R. in December 2011, she responded on 30 January 2011. She repeated that the whole property belonged to her.

Legal Reasoning

The appeal is impermissible.

The appellant does not have the right to appeal. The right to appeal is assigned to those – and only those – persons, who are adversely affected by the contested decision. The contested decision of the KPCC, however, has no negative legal effect on the appellant. On the contrary, with its decision the KPCC dismissed the claim of D.R.. The KPCC did not decide on any request of the respondent as this would not have been within the jurisdiction of the KPCC. The KPCC only has to decide on claims with which the claimant states that he/she had lost the property because of the armed conflict of 1998/1999 in Kosovo. The respondent never filed such a formal claim which should have been submitted by the end of the year 2007 (Section 8 of Administrative Direction 2007/5 as amended by Law No. 03/L-079) nor did he ever claim to have lost the property because of circumstances directly related to the armed conflict (Section 3.1 of UNMIK-Regulation 2006/50 as amended by Law No. 03/L-079). In KPA24692 the appellant only acted as a respondent, the KPCC could according to the legal provisions not confirm his ownership, the KPCC only had to decide whether to confirm the ownership of the claimant, D.R., and decided not to do so. Therefore, as the decision does not have any negative legal effect on the appellant, the appellant had no right to appeal this decision.

The Court wants to add that the appeal also is belated. An appeal has to be filed within a period of 30 days after the decision is served on the party (Section 12.1 Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079; see also Art. 196 of Law No. 03/L-006 on Contested Procedure). The appellant has filed his appeal after the 6 August 2011, on 31 August 2011. This is more than three weeks too late. The appellant states that he had not able to timely file the appeal because of sickness. The attests he gave to the Court, dated 2 June 2011 and 2 July 2011 however only attest “insufficient vasorum cerebri and hypertension arterialis”. These are no reasons why the appellant could not have filed an appeal or requested another person to help him do so.

The Court’s decision is without prejudice to the right of the appellant to seek confirmation of his property right before the competent local authorities.

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 (Sections 10.21, 10.12, 10.1 and 10.15 mutatis mutandis of AD 2008/2), considering that the value of the property at hand can be estimated at € 700: € 7,50 (half portion of the fee according to tariff’s number 10.1 which would have been € 15).

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

According to Article 45.1 of the Law on Court Fees, the deadline for fees payment is 15 days. Article 47.3 provides that in case the party fails to pay the fee within the deadline of 15 days, 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