

**SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA**

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I PËR APELIT TË AKP-së
ŽALBENO VEĆE KAI**

GSK-KPA-A-015/12

**Prishtinë/Priština,
29 November 2012**

In the proceedings of:

F.T.

Respondent/Appellant

represented by

L.T.

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/121/2011 (case file registered at the KPA under number KPA00899), dated 7 September 2011, after deliberation held on 29 November 2012, issues the following

JUDGMENT

- 1- The appeal of F.T. is rejected as unfounded.
- 2- The decision of the Kosovo Property Claims Commission KPCC/D/A/121/2011, dated 7 September 2011, as far as it regards the case registered at the KPA under numbers KPA00899, is confirmed.
- 3- Costs of the proceedings determined in the amount of € 80 (eighty) 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 11 June 2007, D.R. filed a claim with the Kosovo Property Agency (KPA), seeking repossession of a parcel located in Stanoc I Poshtem/Donje Stanovce in Vushtrri/Vučitrn at a place called “Ligata”, parcel No. 980, construction land, with a surface of 1 ha, 55 ar and 15 m². She asserted that she was the owner of the parcel which she had inherited and that the parcel was lost on 1 June 1999 as a result of the circumstances in 1998/1999 in Kosovo.

To support her claim, the claimant provided the KPA amongst others with the following documents:

- Extract from Possession List No. 356, issued by the Municipal Geodesic Administration in Vushtrri/Vučitrn for the cadastral zone of Stanoc I Poshtem/Donje Stanovce on 4 December 1987, showing that the claimed parcel was registered under the name of the claimant, D.R.;
- Possession List No. 356, issued by the United Nations Interim Administration in Kosovo, Department for Cadastre, Geodesy and Property, for the Municipality Vushtrri/Vučitrn, Cadastral Zone Stanoc I Poshtem/Donje Stanovce on 6 December 2006, also showing that the litigious property was registered in the name of the claimant.

The Possession List could be verified, the KPA also found a Certificate for the Immovable Property Rights – UL 70202028-00356, issued by the Municipal Cadastral Office of Vushtrri/Vučitrn on 11 June 2011 for the cadastral zone of Stanoc I Poshtem/Donje Stanovce, showing that owner/possessor of parcel No. 980 was D.R..

On 19 April 2010, the KPA Notification Team went to the litigious property and put up a sign notifying of the claim. The notification was checked on May 2010 based on GPS coordinates and ortophoto and found to be accurate.

On 12 May 2010, X.T. filed a notice of participation in the legal proceedings with the Kosovo Property Agency.

On 14 June 2010, F.T. approached the KPA and stated that his father, who had passed away on 23 May 2010 had bought parcels No. 969 and 980 from a person named M. whose last name was unknown to him. His father then was forced to leave Kosovo for Germany. F.T. stated that the documents concerning the transfer were kept in their house until 1998. The family then was forced to leave the house until when the war ended in 1999. When the family returned they found their house burnt, only the walls remained.

He provided the KPA with a Death Certificate, issued by the Municipality of Prishtinë/Priština on 11 June 2010, showing that X.T. from Stanoc I Poshtem/Donje Stanovce had died on 23 May 2010. He also provided the KPA with the (uncertified) Possession List No. 189, issued by the Cadastral Administration of the Municipality of Vushtrri/Vucitrn on 12 May 2010 for the cadastral zone of Stanoc I Poshtem/Donje Stanovce, showing that parcels no. 969 and 980 were in the possession of V.Z.V.. In its Claim Processing Report to the KPCC, the Executive Secretariat of the KPA noted that this Possession List No. 189 described the situation of the year 1985 and that researches had shown that parcel No. 980 in all registers now was registered in the name of the claimant.

With a note of 14 January 2011, F.T. explained that his deceased father had bought 55 ar of parcel No. 980, registered in Possession List No. 189. He remembered that his father had a written contract on the sale and that he had paid 12.000 DM. Registration was impossible because of the discriminatory laws of this time. After the war the family found the house burnt, the documents most probably also burned. His father looked for M. but did not find him. Later on two different persons claimed the parcel, the claimant as well as V.V.Z..

On 7 September 2011, the KPCC with its decision KPCC/D/A/121/2011 granted the claim. The KPCC stated that the claimant had proven her capacity as the property right holder. The Possession List submitted by the respondent was uncertified, showed a third party as the property right holder and did only describe the situation in 1985, not in the later years. Other evidence of his allegations the respondent had not submitted.

The decision was served on F.T. on 6 December 2011.

On 22 December 2011, L.T., the brother of F.T., filed an appeal with the Supreme Court against the KPCC's decision as far as it concerned 55 ar of parcel No. 980. He challenged the decisions as containing fundamental errors and misapplications of the material and procedural law. He repeated the statement of F.T. and attached a statement of T.T. (an uncle) who confirmed that approximately 55 ar of parcel No. 980 had been bought by X.T. from the neighbour M. in 1991 or 1992 and that 12.000 DM had been paid. Another person, B.B., also confirmed these facts in his written statement.

D.R. responded to the appeal, requesting that the appeal was rejected. She stated that she was the owner of the claimed property and that the appellant and the witnesses named M.V. as the seller because this person had been kidnapped and probably murdered and therefore could not testify otherwise.

Later on in the proceedings L.T. provided the Supreme Court with a power of attorney signed by F.T.. F.T., the appellant, authorized L.T. to represent him in these proceedings before the KPA and the Supreme Court.

Legal reasoning:

The appeal is admissible. Yet it is not founded.

The Court agrees with the KPCC's findings that the appellee, D.R., has proven her right to the property.

The appellant has not stated any facts that could stand against the appellee's ownership.

The Court notes that the appellant changed his statement during the proceedings. On 14 June 2010 he stated that his father had bought both parcels No. 969 and 980, registered in Possession List No. 189. With his note of 14 January 2011, F.T. changed his allegations and now claimed a right only to 55 ar of parcel No. 980.

But even this statement does not provide a right of the appellant respectively his father to (part of) the parcel. Transfer of property can be conducted only by the owner of the property, the person who has a right to the property. The appellant, however, states that his father bought the property not from V.Z.V., but from some person called M. [the Court assumes that this was M.V. as the appellee gave this name]. There is, however, no indication that M.V. ever had been the owner of parcel No. 980 or had any other rights to the property. Therefore, M.V. could not transfer any property rights to the father of the appellant.

The Court does not decide on the question whether it is possible to transfer ownership of a part of a parcel without dividing it officially and having the parts registered as separate parcels.

According to all this, the Court finds neither erroneous establishment of facts nor misapplication of the procedural or material law in the KPCC's decision. Consequently the appeal according to Section 13.3 c) of UNMIK-Regulation 2006/50 as amended by Law No. 03/L-079 had to be rejected as unfounded and the decision of the KPCC confirmed as far as it is related to the case which had to be decided upon in this judgment (KPA00899).

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 litigious property could be reasonably estimated as being € 6.000: € 50.

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 (fifteen) days. 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 the 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