

**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-181/11

**Prishtinë/Priština,
29 November 2012**

In the proceedings of

1. T.M.
2. V.M.
3. B.M.

represented by

4. R.M.

Claimants/Appellants

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/106/2011 (case file registered at the KPA under the number KPA08498), dated 13 May 2011, after deliberation held on 29 November 2012, issues the following

JUDGMENT

1. The appeals of R.M., T.M., V.M. and B.M. against the decision of the Kosovo Property Claims Commission KPCC/D/A/106/2011, dated 13 May 2011, are rejected.

2. **The decision of the Kosovo Property Claims Commission KPCC/D/A/106/2011, dated 13 May 2011, as far as regards the case registered at the KPA under number KPA08498 is annulled.**
3. **The claims of R.M., T.M., V.M. and B.M. are rejected.**
4. **The costs of the proceedings are determined in the amount of € 80 (eighty). Thereof each of the appellants has to pay € 20 (twenty) to the Kosovo Budget within 90 (ninety) days from the day the judgment is delivered or otherwise through compulsory execution.**

Procedural and factual background:

On 12 January 2007, R.M., acting for himself and on behalf of his brothers T., V., B. and M. M., filed a claim with the Kosovo Property Agency (KPA), seeking to be recognized as the owners of different land parcels, acquired by inheritance and claimed their repossession. He explained that the parcels belonged to him and his brothers. He stated that the property was occupied as a result of circumstances of 1998/1999 in Kosovo and the date of loss was 12 June 1999.

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

- Inheritance Decision issued by the Municipal Court of Klinë/Klina T.nr.14/92, dated 4 May 1992. Through this decision, following the death of their deceased father N.M., claimant – R.M. and his four brothers T., V., B. and M.M., have been pronounced as inheritors of the inheritance mass, within it cadastral parcels No. 1/249 and No. 24/2 at the place called “Kaproishte”, with a surface of 14014 m², respectively 6655 m², Cadastral Zone of Pjetër i Poshtëm/Donji Petrić.
- According to the Immovable Property Right Certificate UL-71011027-00019, issued by the Cadastral Office of Klinë/Klina on 3 January 2007, M.M. was registered in the capacity of the owner of the immovable properties from previous paragraph.

Both documents could be verified, the KPA, however, noted that the decision had no “powerful stamp”.

On 13 May 2011, the Kosovo Property Claims Commission (KPCC) through its decision KPCC/D/A/106/2011 granted the claim as follows: It established that M.M. is the owner of the cadastral parcel 1/249 and 24/2 at the place called “Kaproishte”, with a surface of 14014 m², respectively 6655 m², Cadastral Zone of Pjetër i Poshtëm/Donji Petrić, and he therefore is given re-possession of these immovable properties. The decision also provided that any party occupying the properties should vacate them otherwise

it will face forcible eviction. In the final part of the decision, KPCC provided as a legal remedy that an appeal against this decision should be filed within 30 (thirty) days from the notification date of parties.

The decision was served to the claimant on 12 September 2011. On 11 October 2011, he filed an appeal, stating that the appealed decision was followed by erroneous determination of factual situation and the same therefore should be corrected. This is due to the fact that according to the Municipal Court of Klinë/Klina Inheritance Decision T.nr.14/92, dated 4 May 1992, following the death of their deceased father N.M., R.M. and his four brothers T., V., B. and M.M., have been pronounced as inheritors of the cadastral parcels 1/249 and 24/2 at the place called “Kaproishte” with a surface of 14014 m² respectively 6655 m², Cadastral Zone of Pjetër i Poshtëm/Donji Petrić. Furthermore, he proposed to the Supreme Court to confirm that these heirs each are owners of 1/5 ideal part of these parcels.

As the Supreme Court requested R.M. to submit powers of attorney given by his brothers, he provided the Court with powers of attorneys given by his brothers T., V. and B.M.. M.M., however, in whose name the parcel is registered, according to R.M. refused to provide him with a power of attorney.

Legal reasoning:

The Court notes that claimants/appellants are R., V., T. and B.M.. The claimant R.M. has submitted valid powers of attorney given by his three brothers. R.M., however, has not provided the Court with a power of attorney of his brother M.M.. Accordingly, M.M. has never been a party to the proceedings, neither as claimant nor as appellant as R.M. has not been entitled to represent him.

Permissibility of the appeals

The appeals are permissible. The appellants have a legal interest in the appeals as the decision of the KPCC has been to their detriment.

The Court notes that the KPA file contains a report according to which the claimant R.M. in a discussion with a KPA Officer agreed on having the claim processed only in the name of his brother M.M. (who has not provided him with a power of attorney so that R.M. was not entitled to file a claim in the name of his brother). This declaration of R.M.’s, however, is not a valid withdrawal or amendment of the claim (Art. 257ff, 261 Law on Contested Procedure). Art 99.1 LCP provides that “*a claim, reply to a claim, appeals and other statements, proposals and notices that are made out of court shall be filed in writing (submissions)*”. This provision has to be

applied mutatis mutandis to the proceedings before the KPA Appeals Panel of the Supreme Court (Section 13.5 of UNMIK-Regulation 2006/50 as amended by Law No. 03/L-079). As the claimant R.M. did not submit a written withdrawal of his claim, the claim stands as it was expressed in the claims form: To confirm that all five brothers had proven their ownership right to 1/5 ideal part each and give them possession of the parcel. By confirming the ownership right of M.M. to 1/1 part of the parcel, the KPCC therefore decided to the detriment of the claimants, who had requested to be acknowledged as owners to 1/5 ideal part each.

On the merits

Ownership right of the appellants

However, the appellants have not proven that they are owners of the parcels. The parcel is not registered in their name. The inheritance decision of 1992 does not provide sufficient proof. This decision could be verified as such but it could not be made sure that the decision was a final one. So the Court cannot exclude that this decision has been appealed. And even if the decision was final the Court cannot exclude that the brothers later found another solution and distributed the parcels otherwise amongst them.

Under these circumstances the appellants have not proven their ownership to the litigious parcels.

Ownership right of M.M.

The Court, however, has to annul the appealed decision of the KPCC in regard to the claim KPA08498 with which the ownership right to 1/1 part of M.M. was confirmed. The appellants only accept the ownership of M.M. to 1/5. Therefore also the decision to confirm the ownership right (to 1/1 part) of M.M. is appealed. Consequently the Court has to decide on this as well.

However, as the appellant R.M. is not entitled to represent M.M., who refused to provide him with a power of attorney, the Court cannot confirm any right in favour of M.M.. Therefore the appealed decision has to be annulled.

Cost 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 € 8.000: € 50.

Of these each of the appellants has to pay the same share, € 20 (Art. 459.1 LCP).

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 Court decides that, in the current case, the court fees shall be paid by the appellant within 90 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. 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