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-103/12 **Prishtinë/Priština, 5 December 2012**

In the proceedings of:

H. H.,

Ferizaj/Uroševac

Appellant

vs.

K. Ć. M.

Blace
Serbia

Claimant/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/119/2011 (case file registered at the KPA under No. KPA 26422), dated 7 September 2011, after deliberation held on 5 December 2012, issues the following

JUDGMENT

1- The appeal of H. H. is procedurally admissible.

2- The decision of the Kosovo Property Claims Commission KPCC/D/A/119/2011 (regarding case file registered at the KPA under No. KPA 26422), dated 7 September 2011, is annulled as rendered in absence of jurisdiction.

3- The claim of K. Ć. M. - KPA26422 is dismissed as falling outside the jurisdiction of KPCC.

4- Costs of the proceedings determined in the amount of € 37,5 (thirty seven euro and fifty cents) are to be borne by the appellee K. Ć. M. and have to be paid 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 05 April 2007, K. Ć. M. filed a claim with the Kosovo Property Agency (KPA), seeking repossession over a property located in Nerodimlja e Ultë/Donje Nerodimlje, Ferizaj/Uroševac, parcel no. 923, a 4th class cultivated land, with a surface of 13 ar 23 m^2. The claimant started the proceedings as a member of the family of the property right holder (PRH) Ć. N. M.

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

- ID card of the claimant;
- Possession List no. 44, issued on 4 April 2002 by the Cadastral Office of Republic of Serbia in Ferizaj/Uroševac under the name of the PRH, regarding many agricultural lands, including parcel 923;
- Death Certificate of Ć. N. M. (date of death 2 February 1994), issued by the Municipality of Ferizaj/Uroševac (Republic of Serbia) on 31 January 2007;
- Birth Certificate of the claimant K. Ć. M., issued on 28 September 2007 by the Municipality of Ferizaj/Uroševac (Republic of Serbia), certifying that Ć. N. M. is the father of the claimant.

On 27 June 2008, KPA officers went to the parcel and put up a sign indicating that the property was subject to a claim and that interested parties should file their response within 30 days. No one responded to this notification.
The KPCC issued a positive decision – KPCC/D/A/22/2008, which was afterwards repealed by the Commission itself because it was verified that the notification was wrong - KPCC/RES/14/2010.

On 31 August 2010 a new notification was done by a publication in the KPA Notification Gazette no. 8 and the UNHCR property office Bulletin.

No one responded to this notification either.

With decision KPCC/D/A/119/2011 of 7 September 2011 (individual decision from 25 November 2011), the Kosovo Property Claims Commission (KPCC) decided that the claimant had established that Ć. N. M. was the owner of 1/1 of the claimed property and ordered that claimant K. Ć. M. is entitled to possession of the said property, that the respondent if any, and any other person occupying the property had to vacate it within 30 (thirty) days of the delivery of the order and should the respondent or any other person fail to comply with this order to vacate the claimed property within the time period stated, they shall be evicted from the property. The KPCC dismissed the claim for compensation of loss of use for lack of jurisdiction.

The decision was served to the claimant on 1 February 2012.

The decision was also served to the person B. H. on 7 May 2012. There is no explanation as to why this was done.

On 1 August 2012, H. H. filed an appeal with the Supreme Court against the aforementioned decision of the KPCC. He considers that the decision was taken in serious misapplication of the applicable procedural or material law. He claims that the property has been exchanged in the presence of witnesses.

In support of his allegations he presented his hand written declaration, an electricity bill, a contract with the person S. M. and a hand written note, signed by several people.

In the hand written declaration, which has to be considered as part of the appeal, the appellant states that *"the above mentioned property – parcel 923, so 13 ar 23 m² + 8,83 m² + 11,01 = 33 ar"* was exchanged with *"Aren e Bunarit" (so-called "Ara e Bunarit") of 33 ar"*. This exchange allegedly happened in 1986 in the presence of

witnesses, noted by name by the appellant. *I.e.* there was no written contract concluded. In 1987 the appellant has purchased from the person S. M. another parcel of around 28 ar – he presents a contract with this person. At the end the appellant states that he has built a house and other buildings in 1988.
The written note, signed by 5 different individuals relates to the payment of debt, without any indication to what this debt is related.

In response to the appeal the claimant states that the appellant wants to usurp his field in area of 31, 5 ar, which is registered under his name. He states that: *"It is true that we have exchanged the field with his brother I. H., but only conditionally. We did not make any written document. However, H. built a house on my parcel…I know M. S. as he is my cousin, and he was not present when we exchanged parcels (fields). M. (V.) S. sold the parcel in area of 13 ar and on my name M. (Ć.) K. a field in area of 31.5 ar is registered…"*

Legal reasoning:

The appeal is admissible. The appellant was not properly notified regarding the proceedings in front of the KPA, therefore his right of appeal has not been precluded.

Section 10.2 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 provides that any person other than the claimant who is purporting to have a right on the disputed property shall become party of the proceedings provided that such person has informed the Executive Secretariat of his/her intention to participate in the proceedings within 30 days of being notified of the claim. For this intention to be brought to the attention of the KPA the person in question has to be informed of the proceeding that had been initiated. Depending on whether such a person responds the procedure in front of the KPA could develop either as uncontested or it could develop into a kind of civil – adversarial proceedings, whenever there is a respondent who would challenge the initial claims – argument after section 10.1 UNMIK/REG/2006/50 as amended by Law No. 03/L-079.

In adversarial proceedings, the parties have to have the opportunity to know and to comment on the claims filed and evidence adducted by the other party. Whenever a person is deprived of this opportunity, his/her right of a fair trial is violated.

The peculiarity of the procedures in front of the KPA is that unlike within the conventional civil cases, the respondent is not known in advance, but the Law presumes that there might be one/ones and therefore demands the adjudicating body "to make reasonable efforts to notify any other person who may have a legal interest in the property".

As already noted the Law in section 10.1 *ibid* provides that the Secretariat shall "make reasonable efforts to notify any other person who may have legal interest in the property". It does not provide for a specific description of what "reasonable efforts" mean with the exception that "in appropriate cases, such reasonable efforts may take form of an announcement in an official publication". The grammatical interpretation of the text as well as the common logic and existing customs in serving documents and information to parties in adversarial proceedings invoke the conclusion that publication is an exception and it would be applicable only in certain cases, only if appropriate – one possibility would be if there are no other means to notify the interested person, for example in some civil proceedings it is acceptable to summon a person with a publication in the State gazette if the person has left his/her known address and did not provide a new one. However this solution cannot be always acceptable in the proceedings in front of the KPA as the respondent is not known in advance in the beginning of the proceedings.

It is up until now accepted that customarily the notification is done by placing a sign (plate) with information regarding the claim in 3 languages (English, Albanian and Serbian) in/on the property in question and as long as the sign has been placed in/on the correct place/object – parcel, house, etc. the notification is considered correctly done and possible interested parties duly notified of the procedure in front of the KPA, unless there is a reason to believe otherwise.

In the current case it is certain that the notification of 27 June 2008 was wrong – the notification sign was not put in the right place.

Afterwards, on 31 August 2010 a new notification was made, but through a publication.

In addition to that, the appealed decision was served to a person who did not take part in the proceedings at all. This is an indication that the notification by publication was not considered as a proper one by the KPA officers themselves – *i.e.* if the publication would suffice why would the KPA serve the decision to a person who did not take party in the proceedings?

However there is a procedural impediment for the adjudication of the appeal.

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 the context of the established facts in the current case the statement of the claimant that the possession of the property was lost in relation to the armed conflict of 1998/1999 remains unjustified.

With his own statement in the response to the appeal, the appellee, claimant in front of the KPA admits that he has exchanged the disputed field. He said that this was conditionally without explaining what conditionally means but he also explained that the appellant had built a house in the parcel. He does not argue that this house was built in 1988 (as the appellant H. H. states). If H. has built a house in the field in 1988 (which the claimant does not dispute) and occupied the field himself this means that ever since 1988 the M. family have not occupied the land anymore. *I.e.* the loss of possession was not at all related to the armed conflict in Kosovo of 1998/1999, because it had happened 10 years earlier- at latest in 1988. In this respect it is irrelevant whether there was a written contract and whether this *exchange* really produced any legal effect. The relevant fact is that the loss of possession occurred in a situation and moment in time unrelated to the events of 1998 and 1999. In case K. Ć. M. and H. H. have some unresolved obligational disputes related to the alleged *exchange* which dates back to the 80s of the 20th century they have to be resolved by the regular civil courts.

In this respect the Court should not elaborate on the merits of the appeal and the merits of the appealed decision.

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, 10.15 and 10.1 of AD 2008/2) considering that the value of the property at hand could be reasonably estimated as being € 1323: € 7,5.

These court fees are to be borne by the claimant K. Ć. M. (who has filed a claim outside the jurisdiction of the KPCC) to the Kosovo Budget within 90 (ninety) days from the day the judgment is delivered or otherwise through compulsory execution.

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 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