

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-087/12

Prishtinë/Priština, 19 February 2013

In the proceedings of:

A. Z.

Appellant

vs.

M. S.

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/119/2011 (case file registered at the KPA under No. KPA11468), dated 7 September 2011, after deliberation held on 19 February 2013, issues the following

JUDGMENT

- 1- The appeal of A. Z. is rejected as unfounded.
- 2- The decision of the Kosovo Property Claims Commission KPCC/D/A/119/2011, dated 7 September 2011, as far as it regards the case registered under No. KPA11468 is confirmed.
- 3- The appellant has to pay the costs of the proceedings which are determined in the amount of € 50 (fifty euro) within 15 (fifteen) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 24 July 2006, M. S. in the capacity of a family member of the Property Right Holder D. S. filed a claim with the Kosovo Property Agency (KPA), regarding a land located in Hallaç i Madh/Veliki Alaš, Lipjan/Ljipljan, parcel No. 226, a with a surface of 26 ar 32 m². He requested repossession. He explained that the property was lost as a result of the circumstances of 1998/1999 in Kosovo and that the same is currently unlawfully occupied. To support his claim, the claimant provided the KPA with the following documents:

- Possession List No. 13 issued by the Municipal Geodesy Office of Lipjan/Ljipljan on 19 April 1988 for the cadastral zone Hallaç i Madh/Veliki Alaš, showing that parcel No. 226 with a surface of 26 ar 32 m² was registered in the name of D. S.(property right holder- PRH);
- Death certificate issued on 4 July 2006 by the Municipality of Lipjan/Ljipljan, Republic of Serbia, showing that the Property Right Holder died on 14 April 1988;
- Birth certificate issued on 16 July 2007 by the Municipality of Lipjan/Ljipljan, Republic of Serbia of the claimant, born on 29 January 1949;
- Certificate of ownership rights over the immovable property UL-71409013-00013 dated 18 September 2007, showing that the claimed immovable property is registered under the name of D. S.;
- Claimant's identification card;

The KPA informed the potential interested parties about the existence of the claim by placing notification sign allegedly in the parcel which is subject of this claim on 7 august 2007.

With Decision KPCC/D/A/19/2008 dated 20 June 2008, the KPCC has decided that the claim is grounded by recognizing the ownership of the claimant's father – Property Right Holder D. S. to 1/1 of the claimed property and by deciding to return this immovable property into possession of the claimant envisaging compulsory execution. The Commission has established that the provided documentation legitimates the claimant as a lawful owner.

With Resolution KPCC/RES/14/2010 dated 11 February 2010, the KPCC has annulled its decision KPCC/D/A/19/2008 dated 20 June 2008, as far as it regards case file no. KPA11468, because it turned out that the notification of 2007 was wrong, the notification sign had been placed in a different parcel. In order to ensure the accurate notification of the cadastral parcel and to give to any person who may have legal interest the possibility to respond to the claim regarding the property in question, as foreseen in Article 10.1 of the UNMIK Regulation 2006/50 amended with Law no. 03/L-079 the KPA had to perform a new notification.

The KPA Executive Secretariat did not re-notify physically the claimed parcel. Instead, on 24 September 2010 the Secretariat made a notification by a publication in the KPA Notification Gazette. The Gazette was distributed to appropriate bodies.

With Decision KPCC/D/A/119/2011 dated 7 September 2011, the KPCC admitted that the claim is grounded by recognizing of ownership to the claimant's father D. S. over the claimed agricultural land and by deciding to return this immovable property into his possession envisaging compulsory execution. The Commission established that the provided documentation legitimates the Property Right Holder as a lawful owner.

The decision was served to the claimant on 22 February 2012. On the same date the claimant requested repossession of the claimed property. On 13 June 2012 A. Z. – appellant received the KPCC decision. On 9 July 2012 the appellant filed an appeal.

The appellant stated that he bought the claimed parcel in 1976, but it could not have been transferred due to certain circumstances. He does not explain what these circumstances were. He does not explain whether he ever entered into possession of the land and if yes when.

Legal reasoning:

Admissibility of the appeal:

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.

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 invokes the conclusion that publication is rather an exception than a rule and that the rule itself has to be deducted on the basis of common logic and existing customs. The KPCC usually notifies 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 not disputed that in 2007 the notification sign was not put in the right place. Afterwards, in 2010 a new notification was made, but through publication. The latter was not an appropriate way of informing interested parties. Publication is applicable only in certain cases – one possibility would be if there are no other means to notify an 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 is unacceptable in the proceedings in front of the KPA as the respondent is not known in the beginning. In this regard the appeal is admissible.

On the merits:

The appeal is ungrounded. The decision of the KPCC is correct; the Court finds neither incomplete establishment of facts nor erroneous application of the material or procedural law. The KPCC, on the basis of the presented evidence, i.e. possession List No. 13 issued by the Municipal Geodesy Office of Lipjan/Ljipljan on 19 April 1988 for the cadastral zone Hallaç i Madh/Veliki Alaš, regarding parcel No. 226

with a surface of 26 ar 32 m² , registered in the name of D. S. and certificate of ownership rights over the immovable property UL-71409013-00013 dated 18 September 2007 rightfully accepted that the property of the disputed land belonged to the deceased Property Right Holder.

The appellant on his turn did not present any evidence to prove that he has either purchased the property in 1976 and/or established adverse possession over it afterwards. There are no indications whatsoever that the Property Right Holder intended to transfer the property to the appellant or that the latter had possessed this property ever after until the events of 1998/1999. His assertions in regards alleged transfer, respectfully he acquiring the property against the Property Rights Holder remains unproven.

In conclusion, as long as the appellant has not proven his right of property his appeal stands to be rejected as 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 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 € 2600: € 20.

These court fees are to be borne by the appellant who loses the case. According to Article 45 Paragraph 1 of the Law on Court Fees, the deadline for fees' payment is 15 days. Article 47 Paragraph 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

Elka Filcheva-Ermenkova, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar