

**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-140/12

**Prishtinë/Priština,
12 April 2013**

In the proceedings of:

Y. S.

Appellant s/Respondents

vs.

O. D.

Appellee/Claimant

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/148/2012 (case file registered at the KPA under the number KPA14022), dated 19 April 2012, after deliberation held on 12 April 2013, issues the following

JUDGMENT

- 1- The appeal of H. S. against the decision of the Kosovo Property Claims Commission KPCC/D/A/148/2012 (case file registered at the KPA under the number KPA14022), dated 19 April 2012 is dismissed as impermissible
- 2- The appeal of Y. S. against the decision of the Kosovo Property Claims Commission KPCC/D/A/148/2012 (case file registered at the KPA under the number KPA14022), dated 19 April 2012, is rejected as ungrounded.
- 3- The decision of the Kosovo Property Claims Commission KPCC/D/A/148/2012 (case file registered at the KPA under the number KPA14022), dated 19 April 2012, is confirmed.
- 4- The appellants have to pay solidary the costs of the proceedings which are determined in the amount of € 80 (€ eighty) within 15 (fifteen) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 10 August 2006, O. D. filed a claim with the Kosovo Property Agency (KPA), seeking repossession of a land – parcel No 10191 of 15, 61 acres in Prizren (described as commercial, without building). The claimant stated that she is the co-owner of the property.

To support her claim she provided the KPA with the following documents:

- Inheritance decision, of the Municipal Court in Prizren on 18 May 2001, case No 99/2001, taken in a procedure regarding the inheritance of claimant's late mother D.J. the decision recognized the inheritance rights of her children – to each $\frac{1}{4}$ ideal part. One of the properties included in the inheritance was the disputed parcel;

- Possession list No 021, dated 22 May 2011, issued by the Municipality of Prizren under the name of the claimant and her three sisters, each noted as owner of $\frac{1}{4}$ ideal part of several properties, among which the disputed one.

The KPA informed the potential interested parties about the claim by placing a notification sign on the garage, located in the property on 5 May 2010.

The same day the interested party I.S. filed a response claiming that R. S. (probably his father) has purchased the parcel.

To support his assertions he provided the KPA with the following document:

- A court decision No 345/1984, issued by the Municipal Court in Prizren, taken in a property dispute between R. S. and V. D. The latter was ordered to hand over to R. S. parcel No 10190;

With Decision KPCC/D/A/148/2012 (case file registered at the KPA under the number KPA14022), dated 19 April 2012, the KPCC has admitted that the claim is grounded. The KPCC has accepted that the evidence presented by the claimant legitimates her as the rightful owner. The respondent submitted evidence related to a different parcel (10190), neighboring the disputed one (10191).

The decision was served to the claimant on 24 December 2012 and to the respondent I.S. on 16 October 2012.

On 2 November 2012 I. and H. S. filed an appeal, asserting that the property belongs to their family and they have built a house on it 20 years ago.

The claimant, now appellee, responded to the appeal, saying that the appellant have not built a house in their parcel, but in another one. She added that her family used the disputed parcel No 10191 until 1999 and that the appellants own the neighboring parcel 10190.

Legal reasoning:

Admissibility of the appeals:

The appeal of H. S. is inadmissible. He did not take part in the proceedings in front of the KPCC, even though he was duly notified for the claim – the notification sign was put on the door of a garage, built in the disputed parcel.

The appeal of I. S. is admissible. It has been filed by an interested party, who took part in the proceedings in front of the KPCC and within the 30 day period after the service of the decision, as prescribed by the Law – section 12.1 UNMIK/REG/2006/50, as amended by Law No. 03/L-079.

On the merits of the appeal of Y. S. :

The Supreme Court after evaluating the file, the appealed decision and the allegations of the appellant considers that the appeal is unfounded.

The right of property can be acquired by law itself, based on a legal transfer (legal affair) or inheritance – basic principle in property law.

In the particular case it is positively established that the claimant, on the basis of inheritance has acquired the right of property over $\frac{1}{4}$ ideal part of the disputed part. It is not disproven that the parcel belonged to the inheritance of D. J. the mother of the claimant.

The respondent should have proven on his side that he has legitimate rights which prevail over the rights of the claimant, which he did not. In civil procedure everyone has the burden of proof to provide evidence for the facts on the basis of which one claims to have earned acquired rights – argument after art. 7.1 of the Law on contested procedure, which states that a party shall have a duty to present all the facts on which it bases its claims and submits evidence that establishes such facts.

The appellant did not provide any evidence that his family has any rights regarding parcel 10191. He presented evidence that his family has rights over the neighboring parcel – 10190. In the file there is also a picture of parcel 10191 from which it is obvious that there are no houses build on it, there are two houses build in the neighboring parcel, on the border line with parcel 10191 (allegedly houses built by the family of the appellant). Obviously the appellant is confused about the boundaries of his parcel – 10190 or simply wants to “extend” his rights towards the neighboring parcel, which does not belong to him.

Therefore, the Supreme Court concluded that the KPCC decision is right and lawful and has to be confirmed as stipulated in article 13.3 (c) of the UNMIK Regulation 2006/50 amended with Law 03/L-079. Respectfully the appeals stand to be rejected.

Costs of the proceedings:

Pursuant to Annex III, Section 8.4 of the Administrative Direction (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 (10.1 and 10.21 of AD 2008/2) considering that the value of the properties at hand could be reasonably estimated at € 8000 and is € 50.

These court fees are to be borne solidary by the appellants who lose 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