

**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-14/13

**Prishtinë/Priština,
15 May 2013**

In the proceedings of

V. D.

Montenegro

Claimant/Appellant

vs.

Xh. G.

Pejë/Peć

Respondent/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/149 (case file registered at the KPA under No. KPA28994) of 19 April 2012, after deliberation held on 15 May 2013, issues the following

JUDGMENT

- 1- The appeal of V.D. against the decision of the Kosovo Property Claims Commission KPCC/D/A/149/2012 of 19 April 2012 as far as it regards the claim registered at the KPA under No. KPA28994 is rejected as unfounded.
- 2- The decision of the Kosovo Property Claims Commission KPCC/D/A/149/2012 of 19 April 2012 as far as it regards the claim registered at the KPA under No. KPA28994 is confirmed.
- 3- The appellant has to pay the costs of the proceedings which are determined in the amount of € 45 (forty-five) within 90 (ninety) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 19 September 2007, V. D. filed several claims with the Kosovo Property Agency (KPA), seeking repossession. Amongst the claimed parcels was parcel No. 4940/1, located in Jerinjak-Krivoglave, a 3rd class field with a surface of 23 ar and 44 m². The claim was registered at the KPA under no. KPA28994.

On 31 July 2008 Xh. G. replied that his father had bought the parcel in 1991.

The claimant confirmed this with letter of 16 September 2009 and added that Xh. G. had asked to buy the remaining parcels (apparently claimed with other claims at the KPA). From the claimant's letter of 25 June 2010 it can be concluded that the parties did not agree on the price and that the claimant wanted to sell to another person for the price which in her opinion was the just one. With her letter of 8 July 2011, the claimant for the first time asked "the competent bodies to react by enabling us to sell the remaining part of the property which we own and to offer Mr. Xh. G. to buy all the remaining parts of the land for a realistic price".

With its decision KPCC/D/A/149/2012 of 19 April 2012, the KPCC dismissed the claim as the loss of possession of the parcel was not related to the armed conflict in Kosovo in 1998/1999.

On 6 November 2012, the claimant (from her on: the appellant) through the Executive Secretariat of the KPA filed an appeal with the Supreme Court of Kosovo, regarding case file No. KPA28994 (she did not mention any decision of the KPCC as at that time the KPCC had not yet served its decision). She stated that she appealed against the complete KPCC decision and a specific part of it, regarding parcels No. 4940/2 and 4940/3. She stated that she did not dispute that parcel No. 4940/1 had been sold to the respondent's father. She requested, however, that the respondent should be contacted and should be presented with the offer to purchase the other two parcels or allow her the free sale of these parcels. If both parties would not reach an agreement, she would be forced to file a complaint before the Court of Human Rights in Strasbourg.

The KPCC's decision was served on the claimant on 6 December 2012.

The respondent did not reply to the appeal.

Legal Reasoning

The appeal is permissible, yet unfounded.

The appellant explicitly accepts that parcel 4940/1 was sold. Insofar, she accepts the decision of the KPCC.

The appellant however, requests from the KPCC/the KPA Appeals Panel to do more than to decide on her original claim. She wants the authorities to force the appellee to buy parcels 4940/2 and 4940/3 or at least agree to their sale.

This is not possible for several reasons:

The KPCC and the KPA Appeals Panel are competent only to resolve ownership claims and claims involving property use rights (Section 3 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079). That means, for example, that the KPCC can recognize the ownership of a party and

grant repossession. The KPCC, however, is not entitled to force somebody to buy a parcel or force him to agree to the sale of a parcel (if this consent would be necessary at all for a sale). The KPCC has no mandate to be an intermediary between contracting parties.

Secondly, the request of the appellant is not related at all to the armed conflict that occurred in Kosovo in 1998/1999. This, however, would be a condition to the jurisdiction of the KPCC/KPA Appeals Panel as well (Section 3 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079).

Thirdly, the claimant filed her request for the first time in 2011. As claims with the KPA/KPCC could be validly filed with the KPA only until a deadline of 3 December 2007 (Section 8 of Administrative Direction 2007/5 as amended by Law No. 03/L-079), the request even if it would have been within the jurisdiction of the KPCC would have been belated.

Consequently, the appeal had to be rejected as unfounded (Section 13.3 c) of UNMIK Regulation 2006/50 as amended by Law 03/L-079; Art. 195.1 d) of the Law On Contested Procedure).

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 request on which the Court decided could be reasonably estimated as being comprised at € 1.000: € 15 .

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 for a person living outside Kosovo may not be

less than 30 days and no longer than 90 days. The Court decides that a deadline of 90 days is given. 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

Sylejman Nuredini, Judge

Elka Filcheva-Ermenkova, EULEX Judge

Urs Nufer, EULEX Registrar