

**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-109/12

**Prishtinë/Priština
23 May 2013**

In the proceedings of

D. J.

Appellee/Claimant

vs

S. I.

Appellant

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/154/2012 (case file registered at the KPA under number KPA31842), dated 6 June 2012, and on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/119/2011 (case file registered at the KPA under number KPA31845), dated 7 September 2011, after deliberation held on 23 May 2013, issues the following

JUDGMENT

- 1- The decisions of the Kosovo Property Claims Commission KPCC/D/A/154/2012, dated 6 June 2012, regarding case file registered at the KPA under number KPA31842, and KPCC/D/A/119/2011 dated 7 September 2011, regarding case file registered at the KPA under number KPA31845, are annulled and the claims are dismissed as they do not fall within the scope of jurisdiction of the KPCC.
- 2- Costs of the proceedings determined in the amount of € 60 (sixty) are to be borne by the appellee 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 12 March 2007, D.J. filed two claims with the Kosovo Property Agency (KPA), seeking repossession of properties located in Skenderaj/Srbica, Rudnik, Starobutici – Kod zadruge, described as two different fields in parcel 1982: one with surface of 33 ar and 97 sq. m and the other with a surface of 21 ar 98 sq. m. He stated that his late father was the owner of the fields and that they are occupied by unknown person. He requests repossession.

He submitted two possession lists: one from 28 February 2001 and a second one with No. 72, dated 26 September 2009, both issued by the Department of Cadaster and Immovable Properties in Skenderaj/Srbica, both under the name of J. C. M.; death certificate of the latter and birth certificate of the claimant.

The KPCC notified potential interested parties by placing notification signs in the properties on 16 June 2008. Following that on 23 October 2010 it issued positive decisions in favor of the claimant. Afterwards the Commission established that the notifications were wrong and invalidated the issued decisions – KPCC/RES/17/2010 from 8 March 2010. The notification procedure was repeated but this time with publication in the KPA notification gazette no.6 on 30 July 2010, to which no one responded.

With decisions KPCC/D/A/154/2012, regarding case file registered at the KPA under number KPA and KPCC/D/A/119/2011, regarding case file registered at the KPA under number

KPA31845, the KPCC found that the claims are grounded. There are no specific arguments related to the relevant claims under No KPA31842 and KPA31845 as they were decided upon along with several hundred other claims in which it was established that there is evidence for the property right holder to have had been the owner of the properties at stake.

The decision was served to the claimant on 29 April 2012.

On 7 September 2012 S. I., now the appellant filed appeals against the decision claiming at first place that his family has not been informed about the proceedings in front of the KPA. On the merits he explains that his family purchased parcels 1981 and 1982 in 1973/74 from D. J. from Runiki. He claims that on 3 September 2012 he called the claimant D. J. who told him that the land was sold and that it was not him who made the request/claim in front of the KPA but the claims were filed by a person named G.

The appeal was served to the claimant who in his formal response to it says that the appellant I. I. has purchased the parcels from the person D. J. and not from him – D. J., because at that time D. was the person, authorized by his father M. J. to deal with these matters. The claim in front of the KPA was submitted by him (D.) and by D. son, J. D. D., a.k.a. G. in order to confirm the number of their parcels. Further the claimant explains in his response that since from the statement of the appellant he understands that the latter does not have valid documents for the properties he has to contact J. D-G., who is in Mitrovica and his lawyer S. I. from Skenderaj/Srbica. He explains that the appellant can renew the talk with these individuals in order to realize the transfer of the properties. Otherwise, he says (the claimant, now appellee) he does not dispute anything.

The Supreme Court joined the cases GSK-KPA-A-109/12 and GSK-KPA-A-110/12 under the number GSK-KPA-A-109/12.

Legal Reasoning

The appeal is admissible although the appellant has not been a party in the proceedings before the KPCC. This circumstance cannot go to the detriment of the appellant as indeed he had not been correctly notified of the claim. The notification was done by publication of the claim in the Notification Gazette of the KPA and the UNHCR Bulletin. This, however, constitutes “reasonable efforts” to notify of the claim as required by section 10.1 of the regulation only in exceptional cases.

Such an exception cannot be found in this case. As the Court cannot exclude that the appellant was not aware of the claim, he has to be accepted as a party to the proceedings - his appeals are admissible.

However the decision of the KPCC has to be annulled *ex officio* as the cases do not fall within its jurisdiction. The KPCCC had not to decide on the merits of the cases but to dismiss them - Section 11.4 (a) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079). As this has not been done the appealed decision *ex officio* has to be annulled and the claims dismissed (argument after art. 198 (1)) of the Law on Contested Procedure which is applicable *mutatis mutandis* for the procedure in front of the Appeals Panel of the Supreme Court under section 12.2 of the UNMIK/REG/2006/50. According to art. 198 (1) LCP if the first instance has taken a decision over claims which do not fall within its jurisdiction the court of second instance has to annul the decision and dismiss the claims.

According to Section 3.1 of UNMIK/REG/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. According to section 2 General principles, point 2.1 of UNMIK/DIR/2007/5 as amended by Law No. 03/L-079 “any person who had an ownership right, lawful possession of or any lawful right of use of or to private immovable property, who at the time of filing the claim is not able to exercise his/her rights due to circumstances directly related to or resulting from the armed conflict of 1998/1999 is entitled to reinstatement as the property right holder in his/her property right”.

The texts are clear that the purpose of this special law (the Regulation) is to ensure the restitution of property rights that cannot be exercised because of circumstances related to the war conflict of 1998/1999. It does not serve for the resolution of other property related disputes, which are in no way related to the armed conflict.

In the current case it turned out that the family of the claimant - now appellee, lost possession over the claimed properties long before the armed conflict, sometime in the early seventies – 1973 or 1974, meaning the loss of possession was not at all related with the armed conflict of 1998 and 1999. In case the claimant (appellee) considers that the property still belongs to his family or him personally he will have to address these possible claims to the ordinary courts. In addition to that he does not even argue that the appellant purchased the properties in the seventies and there is no other

explanation for his claim in front of the KPA but his willingness to put the appellant in the position to purchase them second time in order to legitimize his ownership right. Regardless of whether this is a pure speculation or high probability; the claimant, now appellee (if he so wishes) will have to address the competent local court with his claims as they have no relation to the events of 1998/1999.

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 around € 5500: € 50, yet no more than € 30.

These court fees are to be borne by the appellee who has filed inadmissible claims. According to Article 46, the deadline for fees' payment in this case is between 30 and 90 days. The Court accepts the longest term of 90 days as appropriate. 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