

**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-111/12

**Prishtinë/Priština,
17 July 2013**

In the proceedings of

B. S.

Claimant/Appellant

vs.

L. A.

Respondent/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Elka Filcheva-Ermenkova, Esma Erterzi and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/142/2012 (case file registered at the KPA under No. KPA26069), dated 29 February 2012, after deliberation held on 17 July 2013 issues the following:

JUDGMENT

1. **The decision of the Kosovo Property Claims Commission KPCC/D/A/142/212 (case file registered at the KPA under the number 26069), dated 29 February 2012 is annulled and the claim for private property is dismissed due to lack of jurisdiction.**
2. **The appellant has to pay the cost of the proceedings in the amount of 60 € (sixty euro) within 90 (ninety) days from the day this judgment is delivered or otherwise through compulsory execution.**

Procedural and factual background:

On 8 February 2007, B. S. on behalf of his father in the capacity of a close family member filed a claim with the Kosovo Property Agency (AKP), seeking recognition of ownership and repossession of properties located in Lluzhan/Lužane, Podujevë/Podujevo Municipality, at the place called “Brdo-Voča”, parcel no. 327, a 3rd class meadow with a surface of 55 ar and 38 m², parcel no. 328, a 3rd class meadow with a surface of 23 ar and 39 m², and parcel no. 329, a 3rd class meadow with a surface 19 ar and 99 m². The claimant stated that the parcels were lost on 15 June 1999 as a result of circumstances in 1998/1999 in Kosovo. The claim was registered at the KPA under the number KPA26069.

In order to support his claim, the claimant submitted the following documents at the KPA:

- Possession List no. 23, issued on 11 March 2003 by the Republican Geodesy Body of the Republic of Serbia – Cadastral Service of Podujevë/Podujevo Municipality. Based on this possession list, it is ascertained that the property right holder over cadastral parcels that are subject of the claim is B. S., the claimant’s father;
- Ruling of Podujevë/Podujevo Municipal Court T.nr.98/03 dated 23 November 1983, which ascertained that the father of claimant B. S. was declared as inheritor of the immovable property registered in the possession list no.23 in Cadastral Zone Lluzhan/Lužane, Podujevë/Podujevo Municipality;
- Contract on division of immovable property, certified in Kuršumlja Municipal Court - Podujevë/Podujevo branch, Vr.nr.287/03 dated 11 March 2003, which shows that the property was divided between D. S, B. S. and S. L., so that B. S. acquired the above mentioned claimed cadastral parcels (nos. 327, 328 and 329).

In 2010, KPA notified the claim by placing a sign where the alleged parcels were located. Following the notification of cadastral parcels that are subject of the claim filed by the claimant, the notification team found that these immovable properties were being used by L. A. from the village of Sallabajë/Kisela Banja, Podujevë/Podujevo Municipality, who claimed property right.

To support his claim, the respondent provided the following documents:

- Certificate of the Directorate for Economy, Planning and Development of the Municipality of Podujevo/Podujevë no.08/243-07 dated 19 March 2007;
- Statement, which states that he bought properties, that are subject of the claimant's claim from D.S. for the amount of 30.000 DM, but he could not transfer them into his name at the court, because the father of D.S. had died, because these properties were registered in the name of his father and not in his name (D.). He bought these immovable properties before the armed conflict, that is prior to 1999, and that until that time D. S. had never impeded him in using that property;
- Possession list no. 164, issued by the Directorate for Cadastre, Geodesy and Ownership of Podujevë/Podujevo Municipality dated 29 November 2007, by which it is ascertained that cadastral parcels nos. 327, 328 and 329 in Cadastral Zone in Llluzhanë/Lužane, Podujevë/Podujevo Municipality are registered in the name of B. S., the claimant's father;
- Certificate on Immovable Property Right, issued on 7 June 2011 by the Cadastral Office of Podujevë/Podujevo UL-71712048-00164, by which it is ascertained that cadastral parcels nos. 327, 328 and 329, at the place called "Kodra e Voçës", are properties of B.S., the claimant's father.

With its decision KPCC/D/A/142/2012, dated 29 February 2012, the KPCC rejected that claim with the reasoning that the claimant had failed to present legally valid facts and evidence to ascertain the right on properties which are the subject of his claim. The claimant and his father were contacted by the Executive Secretariat of Kosovo Property Agency and they confirmed the fact that the property right holder over claimed properties had in 1979 exchanged the claimed properties with the respondent for a different parcel, with a surface are of 60 ar. Moreover, the claimant and his father confirmed the circumstance that the brother of the property right holder had sold again to the respondent the half of the parcel with a surface of 60 ar, and that they want the remaining half of the parcel to be returned to them. All documents filed by the claimant were positively verified by the Executive Secretariat.

On 08 August 2012, the KPCC decision was served to the claimant.

On 02 October 2012, the respondent received the KPCC decision but filed no reply to the appeal.

The appellant challenges the KPCC decision and alleges that the decision was rendered under erroneous and incomplete determination of the factual situation as well as wrongful application of the substantive law, and motioned the court to grant his appeal and assert his property right by allowing his re-possession of the claimed property. In addition, in his appeal the appellant states that the immovable properties which are subject of the claim initially belonged to the S. family and their grandfather R. S., after his death properties were inherited by N. S. his father B. S. as well as uncle D. S. Further, he states that he never signed a sale and purchase contract with the respondent L.A., or any other document concerning the exchange of properties.

Legal reasoning:

The appeal is admissible because it was filed within the legal time limit of 30 days upon receipt of the decision, pursuant to Section 12.1 of UNMIK Regulation no. 2006/50, as amended by the Law no. 03/L-079, on resolution of claims relating to immovable property, including agricultural and commercial properties.

The Supreme Court ascertains that the KPCC appeal decision was taken under essential violation of provisions of Article 182, paragraph 2, subparagraph (b) of LCP, and Section 3.1 of UNMIK Regulation no. 2006/50, as amended by the Law no. 03/L-079, which are violations of absolute nature that this court observes ex officio. Therefore, according to this legal basis, the appeal decision is annulled by dismissing the claimant's claim because this case is not in the jurisdiction of this court, and hence of KPCC, pursuant to provisions of Article 198, paragraph 1 of LCP.

Thus, the KPCC decision should be annulled and the claim be dismissed (Section 11.4 (a) of UNMIK Regulation 2006/50, as amended by the Law no. 03/L-079).

Pursuant to Section 3.1 of UNMIK Regulation no. 2006/50, as amended by the Law no. 03/L-079, the claimant is entitled to an order for re-possession by the Commission if the claimant proves not only the ownership over the property but also that he or she is currently unable to exercise his/her property rights over that property due to circumstances related directly to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.

In accordance with the legal provisions of Article 1 and Article 5 paragraph 2 of UNMIK Administrative Direction 2007/5, the claimant – B. S. filed the claim on behalf of his father B. S. as a property right holder.

On 28 September 2010, the property right holder B. S.(claimant's father) of the properties that are subject of the claim as well as the claimant B.S. confirmed that in 1979 they exchanged the claimed parcels with the respondent's parcel with a surface area of 60 are. They also confirmed that the half of the 60 ar parcel, which they used until 1999, was usurped by the respondent. Moreover, they stated that D. S. - the property right holder brother, sold the remaining half of the parcel to L.A. but not the entire parcel. Considering the entire surface of the parcels, the allegations of the Appellant do not stand as to the date of losing the possession over the half of the parcel at different times. The exchange of immovable properties between the property right holder and the respondent was confirmed also by the respondent's son, who added that in the meantime they had bought another 60 ar from D.S., with the approval of his brother B.S.

In addition, the claimant/appellant as well as the property right holder of cadastral parcels confirm the fact that they had sold the exchanged half of 60 are parcel to the respondent. Based on the evidence, it can be undoubtedly confirmed that KPCC, hence the Appeals Panel of the Supreme Court, have no jurisdiction to decide on this particular legal dispute, because according to ascertained facts and administered evidence it has not been proved that the claimant and the property right holder were displaced from the claimed properties and lost the possession and use of these properties as a result of circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999. The possession was lost long before the events of 1998/1999 – i.e. in 1979.

Therefore, due to afore-mentioned reasons and pursuant to the provisions of Article 3, paragraph 1 of UNMIK Regulation 2006/50, as amended by Law no.03/L-079, the claimant's claim has to be dismissed and the decision of the KPCC annulled because this legal dispute is not in the jurisdiction of KPCC or the Appeals Panel of the Supreme Court.

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 to dismiss the claim is determined in the maximum amount of 30 euro, according to section 10.15 as read with section 10.1 of AD no. 2008/2 of the Kosovo Judicial Council on Unification of Court Fees.
- These court fees are to be borne by the appellant who submitted an inadmissible claim. Furthermore, claimant/appellant was aware of this fact yet proceeded with filing of the claim. According to Article 46 of the Law on Court Fees, when a person with residence or domicile abroad is obliged to pay a fee, the deadline for the payment may not be less than 30 days and no longer than 90 days. The Supreme Court decided here that the deadline is 90 (ninety) 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 Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Elka Filcheva-Ermenkova, EULEX Presiding Judge

Esma Erterzi, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar