

**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-023/13

Prishtinë/Priština

1 October 2013

In the proceedings of

A.G

Represented by lawyer B.L.

Appellant

(as the interested party)

vs.

M.B

Claimant/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Elka Filcheva - Ermenkova, Presiding Judge, Esma Erterzi and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/126/2011 (case file registered at the KPA under number KPA 90976), dated 26 October 2011, after deliberation held on 1 October 2013, issues the following:

JUDGMENT

1. The appeal of A.D filed on 21 December 2012 against the decision KPCC/D/A/126/2011, dated 26 October 2011, is accepted.
2. The decision KPCC/D/A/126/2011, dated 26 October 2011, in its part referring to the case registered with the KPA under the number KPA 90976, is annulled as rendered in the absence of jurisdiction, and the claim is dismissed as inadmissible.
3. Costs of the proceedings determined in the amount of € 60 (sixty Euro) are to be borne by the appellee M.B and 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 29 January 2007, M.B filed a claim form with the Kosovo Property Agency (KPA), seeking for repossession of the cadastral parcel no. 283/1, 394/1, 506/2, 541/2 located in the village Lukac i Begut/Begov Lukovac. He alleged that his late grandfather Đ.B is the owner of the properties in village Lukac i Begut/Begov Lukavac.

In the claim form it is further stated that by signing the form, the claimant establishes that the private property was lost as a result of the circumstances in 98/99 in Kosovo and that the date of loss is 12/06/1999.

To support the claim, M.B submitted the copies of the death certificate of Đ.B, the marriage certificate of N.Ć and M.B and the possession list no. 24 listing *inter alia* the cadastral parcel no 394/1 in the name of B.R.Đ issued by the Municipal Geodetic Administration Istog/Istok on 24.11.1978 as well as a power of attorney given to him by N.B¹.

¹ The surname of the claimant and his predecessors are indicated as “B” in the translation into English of the original claim whereas it is shown as B in translations into English of some other documents. Furthermore, the discrepancy in the name of the property right holder in submitted documents as D and in the cadastral records as Đ, is noted as a matter of typographical mistake and confirmed by KPA that both refers to the same person. (*see Annex of the KPA Claim Processing Report to the KPCC dated 6 October 2011*)

As the cadastral parcels claimed in the initial claim form were not adjacent, the original claim numbered KPA 17892 has been split and the claim concerning parcel number 394/1 was registered under the new number KPA 90976.

According to the documents in the KPA file, the said parcel was visited on 22 April 2009 and noted as not occupied. As there was no village leader and as none of the villagers accepted to receive the publications, the publications were placed in the public property at the entrance and exit of Llukac i Begut/Begov Lukavac. The same publications were published in Istog/Istok Municipality, Cadastre, Municipal Court, and KPA Regional Office in Pejë/Peć. In addition, the list and Gazette is distributed to Danish Refugee Council, OSCE, UNHCR, Kosovo Privatisation Agency, EULEX, and Ombudsperson. This means that the notification of the claim was done through publication in the gazette but not in person directly to the occupant or the interested person who claims/may claim legal rights over the parcel.

No notice of participation to the proceedings was filed during first instance.

Based on the verification of the marriage certificate, death certificate, ID card, and the possession list no 24 with comparison to the certificate for the immovable property UL-708060002-00016 dated 18/11/2009 located in the public records in the Department of Cadastre in Istog/Istok by the KPA, the Executive Secretariat referred the case to the KPCC with its Claim Processing Report.

By its Cover Decision KPCC/D/A/126/2011, dated 26 October 2011, the Kosovo Property Claims Commission (KPCC) decided that the claimant established the ownership of the deceased property right holder over the claimed parcel. In the certified decision in terms of Section 8.8 of Annex III of UNMIK Administrative Direction (AD) 2007/5 as amended by Law No 03/L-079, it was decided that the claimant M.B is entitled to the possession of the parcel no. 394/1 and that the Respondent, or any other person occupying the property is ordered to vacate the property within 30 days of the delivery of the order.

The Decision was delivered to the claimant on 28 February 2012 and he requested the property to be placed in the list of properties administered by the KPA.

The appellant received the attacked Decision of the KPCC on 26 November 2012 as one of the interested parties. He filed an appeal through his representative, B.L on 21 December 2012.

The appellant stated in his appeal that his late father K(S)G, formerly from the village Llukavc i Begut, in the Municipality Istog/Istok, purchased the said property in 1974 from Đ.B, the grandfather of the claimant. He alleged that his father paid 41,000.00 dinars as the sale price in the presence of neighbours P.T and M.G. Appellant further stated that he and his brothers and sisters have been holding the possession of the said property since 1974. He suggested hearing of the witnesses I.G, B.G and V(M)B to prove this allegation. He also attached the joint statement VR. Nr. 2110/12 of Sh.R.B, S.M.G and A.R.S which was verified on 4 December 2012 by the Municipal Court in Istog/Istok on 4 December 2012. In that statement is mentioned that K.G bought the property registered as cadastral parcel no 394/1 located in Istog/Istok in the village Llokavc i Begut/Begov Lukavac in 1974 from seller Đ.B and the price was paid in cash. It is further mentioned that the buyer built a house on this property in 1986 which was burnt during the conflict together with the sale contract in it.

In his appeal, appellant maintained that the appealed decision involved serious errors due to failure in using essential legal evidence, erroneous application of the substantial law provisions, violation of human rights while applying the UNMIK Regulation no 2000/60 and UNMIK Regulation no 1999/23 and the applicable law on KPA no 03/L-079. He mentioned that he and his brothers and sisters filed a claim before the Municipal Court asking for the confirmation of the ownership right over the cadastral parcel registered as C.nr. 230/12 in which the Court, on 7 November 2012, granted the preliminary injunction in favour of the claimants prohibiting the current registered owner from further alienation of the said property.

The appellant further alleged that the efforts of the claimant should not be permitted abusing the rights proving solely the concerned immovable property until sometime in the past was registered in the cadastral list before the Municipality of Istog/Istok under the name of his grandfather although he was well aware that his grandfather sold it almost 40 years ago.

He emphasized that the claimant did not lose the possession of the property as a result of the armed conflict in Kosovo in 1998/1999 as the UNMIK Regulation requires for the proceedings before the KPA.

The appeal of A.G was served on the claimant/appellee on 6 March 2013. He did not file a response to the appeal.

On 22 May 2013, the judge rapporteur issued an order to the claimant/appellee giving the opportunity to him to respond the allegation of the appellant on the purchase of the said parcel in 1974 as well as to explain to the Court in which way the loss of the claimed property is directly related to, or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999 (pursuant to Section 3.1 of UNMIK Regulation 2006/50 as amended by Law No 03/L-079). With the said order he was reminded that he might lose the case if he does not comply with the Court's order.

The order was served on the appellee on 23 May 2013. He did not file a respond to the order, either.

Legal reasoning:

1. The status of the appellant as to the proceedings and admissibility of the appeal

The appeal is admissible.

According to Section 12.1 of UNMIK Regulation 2006/50 as amended by the Law No. 03/L-079 on the resolution of claims relating to private immovable property, including agricultural and commercial property, a party may submit an appeal within thirty (30) days of the notification of the decision.

The appellant was not a party before the proceedings in KPCC. The claim was uncontested at first instance level.

Section 10.2 of UNMIK Regulation No 2006/50, as amended by the Law No. 03/L-079, requires that any person other than the claimant who is currently exercising or purporting to have right to the property which is subject of the claim and/or any other person who may have legal interest in the claimed property shall be a party to the claim and the related proceedings, provided that such person informs the Executive Secretariat of his or her intention to participate in the proceedings within 30 days of being notified of the claim in accordance with section 10.1. The referred Section sets forth the ways of notification as notifying any person who might have legal interest or in

appropriate cases in the form of announcement in the official publication of the Executive Secretariat.

On the other hand, Section 10.3 of the same provides the exception of that: *“A person with a legal interest in the claim who did not receive notification of a claim may be admitted as a party at any point in the proceedings.”*

In the case at hand, the notification of the claim was done through publication in the KPA Notification Gazette and distribution to appropriate governmental bodies. The property was not physically notified. Accordingly, the appellant could not have known about the filed claim. The appellant was only served with the decision of the KPCC against which he filed an appeal.

The Supreme Court concludes that he became a party to the proceedings as soon as he became aware of the claim through the appeal. In any case, the appeal is filed within the time limit provided in Section 12.1 of the aforementioned Regulation against the KPCC’s decision. Since the appellant pretends that he is the owner of the claimed property, he has a legal interest in the claim. Thus, his appeal is admissible.

2. The merits of the appeal

The appeal is grounded as it relates the request for annulment of the decision of the KPCC.

From the case file, it results that the appellant’s own statement and the joint statements of Sh.R.B, S.M.G and A.R.S which was verified by the Municipal Court in Istog/Istok on 4.12.2012 refers to the allegation of that the claimed property was sold to the appellant’s father by the claimant’s predecessor in 1974. The appellant maintains that his family possesses this land since 1974. He contests the allegation of the claimant, as it appears in the claim form signed, that the possession was lost during or as a result of armed conflict in 1998/1999. He further refers to the pending case before the Municipal Court for the confirmation of the ownership right over the said parcel.

The Supreme Court notes that it is not relevant for the case pending before it, whether such transaction on the sale of the property, allegedly made in 1974, between the predecessors of the appellant and the appellee exists and/or is legally valid. What is important for the Supreme Court at this stage is whether it has jurisdiction to hear such allegations of the appellant. The Court

responds this question negatively as the matter does not fall under its jurisdiction. This is a matter to be discussed by the ordinary court.

As nobody filed a notification to the Executive Secretariat of the KPA of his/her intention to participate in the administration of the proceedings at the first instance level, the assumption of the KPA and KPCC on the loss of possession of the property during or as a result of armed conflict remained uncontested. However, with the filing of the appeal the assertion of the claimant as to the loss of property on 12 June 1999 became contested. The claimant/appellee did not file a response to the appeal served on him. He did not respond to the order of the judge rapporteur giving the opportunity to him to respond the alleged sale contract made in 1974 or the relation of the loss of the property with the armed conflict, either.

According to Section 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, a claimant is entitled to an order of 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. Both conditions are to be met and proven. The burden of proof lies with the party who alleges a fact. The claimant presented a possession list indicating the registration of the land in the name of his predecessor as verified by the KPA. However, he did not produce any evidence to prove that the loss of the possession of the property relates to or results from the armed conflict that occurred in Kosovo in 1998/1999.

Therefore, the assumption of the KPCC, in an uncontested case, that the loss of the possession might result from the armed conflict cannot stand anymore after the contestation by the appellant that the claimant's predecessor lost the possession of the property in 1974 due to a sale contract. The claimant/appellee failed to produce any evidence as to this second condition regarding the jurisdiction of the KPCC and respectively the KPA Appeals Panel. This is why the appealed decision no. KPCC/D/A/126/2011, dated 26 October 2011, is to be quashed and claim is dismissed as rendered in the absence of jurisdiction.

Due to the fact that the claim is not within the jurisdiction of the Property Claims Commission or that of Supreme Court in these proceedings, the review and assessment of the appeal and the allegations on the sale contract as to its validity becomes unnecessary.

Therefore, based on the above, according to the provision of Section 13.3 (a) of UNMIK Regulation 2006/50 as amended by the Law 03/L-079, it has been decided as in the enacting clause of this judgment.

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): € 30.

These court fees are to be borne by the claimant who filed an inadmissible claim. According to Article 45 Paragraph 1 of the Law on Court Fees, the deadline for fees' payment is 90 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.

Elka Filcheva-Ermenkova, EULEX Presiding Judge

Sylejman Nuredini, Judge

Esma Erterzi, EULEX Judge

Urs Nufer, EULEX Registrar