

**SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA**

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË AKP-ës
ŽALBENO VEĆE KAI**

GSK-KPA-A-100/13

Prishtinë/Priština

17 October 2013

In the proceedings of

B.V

Claimant/Appellant

vs

I.I

Respondent/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Elka Filcheva-Ermenkova, Presiding Judge, Dag Brathole, and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/R/164/2012 (case file registered at the KPA under the numbers KPA 10790) dated 5 September 2012, after deliberation held on 17 October 2013, issues the following

JUDGMENT

- 1- **The decision of the Kosovo Property Claims Commission KPCC/D/A/164/2012 regarding case file registered at the KPA under the number KPA 10790) dated 5 September 2012 is annulled and the claim for private property is dismissed due to lack of jurisdiction.**

- 2- **B.V 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.**

On 12 December 2006 B.V, as a family member of the property right holder P.V (the claimant's father), filed a claim with the Kosovo Property Agency (KPA), seeking repossession of parcel nr. 661 in Muhadzer Babuš, Lipjan. P.V died 11 September 1983. According to the possession list no. 9, the entire property is registered in the name of P.V.

I.I has filed a response to the claim, which is undated. In a statement dated 18 August 2008, he states that he bought the property from P.V in 1976. He was unable to register the purchase, because P.V changed his address. I. later learnt that P.V died in 1983. I. claims to have paid the property in full. In a later statement of 29 August 2011 I. states that he bought the property in 1977, and that he has built two houses on the property in 1980 and in 1992.

In a statement from August 2012 B.V confirms that the property was sold in 1978 to SH.L. However B.V claims that the purchase price was never paid in full, and that this was the reason why the contract was never signed and the purchase not registered. B.V asks the KPA to establish that the seller, represented by his legal heirs, has a right to claim the remaining debt.

In its cover decision of 5 September 2012, on page 20 under the headline "Claim nr. 10790" the KPCC rejected B.V claim, stating that the alleged property owner had voluntarily disposed of the property prior to the 1998-1999 conflict, and that he had therefore failed to show ownership or any other property right over the claimed property prior to or during the 1998-1999 conflict.

The decision was served on B.V 3 April 2013. He filed an appeal 22 April 2013. The appeal was served on I. on 3 July 2013, who did not reply within the 30 days deadline.

The appeal has been submitted by lawyer D.A.V, who has filed a power of attorney to act on behalf of B.V in the case. In the appeal, it is stated that KPCC wrongly found that I. was the owner of the property based on “court certified statements of two witnesses”. These witnesses should be interviewed in a legal procedure allowing B.V to ask questions. Furthermore, it is stated in the appeal that there has not been filed any contract or written evidence pertaining to the sale, so that the allegation of contract is inconclusive or unlawful. The appeal does not state that B.V previous statements about sale of the property and lack of full payment, is incorrect.

Legal reasoning.

The appeal is admissible. It has been filed within the period of 30 days prescribed in Section 12.1 of UNMIK Regulation 2006/50 as amended by Law nr. 03/L-079.

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 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 clearly demonstrate 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.

This special law does not serve for the resolution of conventional property and property related disputes, which are in no way related to the armed conflict. Those are deemed to receive their resolution within the framework of the existing general property legislation, like for example the Law on Property and Other Real Rights (Law No.03/L-154 of 2009, OG No. 57/2009).

In the present case, it is not contested that an agreement about sale of the disputed property was made in the second half of the seventies. The parties disagree over the terms of the agreement, whether a final sale

was made and the purchase price paid. In addition, B.V states that his father has sold the property to SH.L, whereas Islami claims that he bought the property from B.V's father. This is a conflict that has to be solved by the ordinary courts.

It is also not contested that Islami has built two houses on the property in 1980 and in 1992.

Accordingly, the dispute is not related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.

KPCC has rejected the claim, after discussing the merits of the case. In the opinion of the Supreme Court, the KPCC does not have jurisdiction over the case according to Section 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079. Therefore The Supreme Court annulled the KPCC decision and dismissed the claim due to lack of jurisdiction.

The Courts decision is without prejudice to the right of B.V to seek confirmation of her property right before the competent local authorities.

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 euros, 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.

The appeal from B.V has led to the annulment of the KPCC decision, but also to the dismissal of his claim to the KPA. The appeal from B.V has been partly successful.. In accordance with Law on Contested procedure Article 452.2 the Supreme Court decides that each party shall carry his own expenses. These court fees are therefore to be borne by B.V who submitted the appeal.

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 B.V 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

Dag Brathole, EULEX Judge

Urs Nufer, EULEX Registrar