

**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-126/12

Prishtinë/Priština, 17 October 2013

In the proceedings of:

Municipality of K.

Appellant

vs.

K. S. Đ.

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/C/150/2012 (case file registered at the KPA under No. KPA15045), dated 19 April 2012, after deliberation held on 17 October 2013, issues the following

JUDGMENT

- 1- The appeal is dismissed as inadmissible.

- 2- The appellant has to pay the costs of the proceedings which are determined in the amount of € 30 (thirty) within 15 (fifteen) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 23 August 2006, K. S. Đ. filed a claim with the Kosovo Property Agency (KPA), seeking to be recognized as the owner of a property, an apartment with a surface of 69.38 m², located in Klinë/Klina, str. Knez Miloš, lamella A bb 4. He, along with his family members were granted use right for indefinite duration, according to the decision of the Committee for residential matters No 360-1905/98-60 from 7 May 1998. He stated that he had lost the possession over the property on 18 June 1999 and that the loss was a result of the circumstances 1998/1999 in Kosovo. To support his claim, the claimant provided the KPA amongst others with the following documents:

- decision of the Committee for residential matters No 360-1905/98-60 from 7 May 1998 for granting the claimant and the members of his family with the use right over the claimed apartment (along with a separate document with the reasoning for the decision, dated 13 May 1998), positively verified by KPA;
- minutes from the handover of the apartment, dated 14 May 1998;
- various invoices for utility bills;

The KPA team notified the property by placing a sign on the door of the apartment on 12 July 2007. The property was occupied by M. M., he signed the notice of participation. He did not claim any right over the apartment

With decision KPCC/D/C/150/2012 (case file registered at the KPA under No. KPA15045) the Commission granted the claim. The decision-making body considered that the claimant has proven the existence of residential use right, granted with the decision of the Committee for residential matters from May 1998.

The decision was served on the claimant on 27 August 2012.

On 19 September 2012, the Municipality of K. filed an appeal against the KPCC's decision. The appellant claims that the decision contains fundamental errors and misapplication of the material and procedural law. In support of its position the appellant presents numerous evidential documents: court settlement dated 10 September 2007, list of inventory of apartments, minutes of allocation, etc. The appellant claims that it has not been properly informed about the claim and that it had not had the possibility to take part in the proceedings. On the merits of the case it asserts that the substantive law, applied by the KPCC was not in force in Kosovo anymore.

The claimant responded to the appeal, stating that it is impermissible as the appellant did not take part in the proceedings in front of the KPA and alternatively that it should be rejected on its merits.

Legal reasoning:

The appeal is impermissible on procedural grounds (Section 13.3 (b) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079) as the appellant has not taken part in the proceedings in the first instance.

Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 stipulates the following: *"Within thirty (30) days of the notification to the parties by the Kosovo Property Agency of a decision of the Commission on a claim, a party may submit [...] an appeal against such decision"*. Also Art. 176.1 of the Law 03/L-006 on Contested Procedure provide that the right to file an appeal belongs to the parties at the first instance proceedings.

A party to the claim and the related proceedings is *"any person other than the claimant who is currently exercising or purporting to have rights to the property which is the subject of the claim and/ or any other person who may have a legal interest in the claimed property [...], provided that such person informs the Executive Secretariat of his or her intention to participate in the administrative proceedings within thirty (30) days of being notified of the claim by the Executive Secretariat in accordance with Section 10.1"* (Section 10.2 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079).

The appellant the Municipality of K. has not been a party in the first instance proceedings before the KPCC. To explain such a situation, the appellant asserts that it was not aware of those proceedings. Indeed, Section

10.3 of UNMIK Regulation 2006/50 as amended by the Law No. 03/L-079 reads: “*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.*”

Therefore, the Supreme Court has to check whether the appellant was notified of the claim. The way to notify of a claim in this exceptional mass claim process is foreseen by section 10.1 of UNMIK Regulation 2006/50 as amended by the Law No. 03/L-079. According to this provision, the Executive Secretariat has to make reasonable efforts to notify any person who may have a legal interest in the property of the claim. The same provision adds that “*in appropriate cases, such reasonable efforts may take the form of an announcement in an official publication of the Executive Secretariat*”.

The Court notes that the notification on 12 July 2007 had been properly executed. The KPA team has placed an information sign in three languages – Albanian, Serbian and English on the door of the apartment. This is also confirmed by the fact that the KPA found a person occupying the property – Mr. M., who did sign a notice of participation but did not object to the claim and did not claimed any rights of his own.

The current appellant – the Municipality of K. claims to be the owner of the apartment, on whose door the notification sign was placed. There is no reason as to why the Municipality did not inform the KPA of its intention to take part in the proceedings, as it should have done.

As the Municipality has no excuse as to why it did not take part in the first instance proceedings before the KPA this omission goes to its own detriment.

Therefore the appeal has to be dismissed as impermissible (Section 13.3 (b) of UNMIK-Regulation 2006/50 as amended by Law No. 03/L-079; see also Art. 195.1 of the Law On Contested Procedure).

As the appeal is impermissible, the Supreme Court is not allowed to decide on either the question of the jurisdiction of the KPCC/KPA Appeals Panel or the legal questions concerning the purchase of the parcel.

Costs:

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

These court fee is to be borne by the appellant who loses the case. According to Article 45 Paragraph 1 of the Law on Court Fees, the deadline for fees' payment is 15 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

Esma Erterzi, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar