

**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-068/13

Prishtina, 21 October 2013,

In the proceedings of:

M.S

Appellant/Claimant

Represented by
Z.S, lawyer in N.,

vs.

M.A.P

Appellee/Respondent

The KPA Appeals Panel of the Supreme Court of Kosovo (hereafter: the Supreme Court) composed of Elka Filcheva-Ermenkova Presiding Judge, Willem Brouwer and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/126/2012 (case file registered at the KPA under No. 14275), dated 6 June 2012, after deliberation held on 17 October 2013, issues the following

JUDGMENT:

1. The appeal of M.S is rejected as ungrounded;
2. The decision of KPCC no. KPCC/D/A/156/2012 dated 6 June 2012, regarding claim no. KPA14275 is confirmed;
3. The cost of the proceedings in the amount of € 60 (sixty euro) are to be paid by M.S within 90 (ninety) days from the day this judgment is being served or otherwise through compulsory execution.

1. Procedural background:

1.1. On 3 October 2006, M.S filed a claim at the Kosovo Property Agency (KPA), seeking confirmation of her property right over half of the parcel 11/2 with a surface of 2. 9. 20 ha cadastral area Podujevo, registered in the possession list 348 (hereafter: the property).

1.2. By decision of 6 June 2012, the KPCC found the claim inadmissible due to the lack of jurisdiction. The decision was received by M.S on 30 January 2013.

1.3. M.S filed an appeal against the KPCC decision at the KPA on 27 February 2013.

1.4. A copy of the appeal was submitted to the appellee, whom did not file any response.

2. Factual background

The Appeals panel takes as facts as established by the KPCC and not contested by parties or otherwise proven wrong the following:

2.1. M.S was the rightful owner of the property at least until 8 September 1999.

2.2. The property was expropriated by the municipal counsel of Podujevo by an act of 8 September 1999 in order to be used as building ground.

2.3. M.S did not receive any compensation for the loss of the property.

3. Legal dispute:

3.1 The question to be answered by the Supreme Court is whether KPCC has rightfully deemed M.S's complain not admissible.

4. Legal reasoning:

Jurisdiction

4.1 The Supreme Court has jurisdiction to decide over the above mentioned legal dispute.

Admissibility

4.2 By decision of 6 June 2012, the KPCC found the claim inadmissible due to the lack of jurisdiction. The decision was received by M.S on 30 January 2013. She filed the appeal against the KPCC decision at the KPA on 27 February 2013 which is within the period of 30 days mentioned in section 12.1 of the UNMIK Regulation 2006/50, as amended by Law No. 03/L-079 on Resolution of Claims Relating to Immovable Property, Including Agricultural and Commercial Property.

The appeal of M.S is therefore admissible.

Merits

4.3 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.

4.4 The rightful ownership is not disputed by the appellee and, apparently just for the sake of completeness, confirmed by the KPCC. So M.S had to establish that 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.

4.5 In her appeal she stated not to be able to exercise her property rights at the time that she submitted the claim at the KPA. This claim was registered on 3 October 2006. More than 5 years after the expropriation in 1999.

4.6. The expropriation itself took place on 8 September 1999, so not within the period of the mandate mentioned in Section 3.1 of UNMIK Regulation 2006/50. This implies that this disability of exercising owner rights must have taken place in the period before that date.

4.7. No facts were stated, nor was evidence given by M.S in order to make such a situation credible. In fact the act of expropriation gives a legal instruction saying: *“Against this decision the unsatisfied party has the right to complaint in the period of 15 days after rendering this decision”*. This implies that owner rights of a sort could have been exercised at that time.

1.4. This leads the Supreme Court to the conclusion that M.S’s claim is not subject to the mandate of the KPCC and not admissible for that reason. M.S’s appeal is thus rejected and the decision of KPCC confirmed.

1.5. This decision will not have any prejudice to M.S’s statement that the expropriation was unlawful and/or compensation should be paid for this expropriation.

4. **Costs of the proceedings:**

4.1 Pursuant to Article 8.4 of Administrative Direction (AD) 2007/5 as amended by the Law No. 03/L-079, the parties are exempt from the costs of the proceedings before the Executive Secretariat and the Commission. However such exemption is not foreseen for the proceedings before the Appeals Panel.

4.2. 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.

4.3. 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 judgement (Section 10.21, 10.15 and 10.1): € 30;

These court fees are to be borne by the M.S who loses the case.

4.4. According to Article 45.1 of the Law on Court Fees, the deadline for fees payment is 90 days. Article 47.3 provides that in case the party fails to pay the fee within the deadline of 90 days, 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.

5. Legal Advice

Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by the 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

Willem Brouwer, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar