

**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-050/13

**Prishtinë/Priština,
12 November 2013**

In the proceedings of:

D.F

Appellant/Claimant

The KPA Appeals Panel of the Supreme Court of Kosovo, 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/170/2012 (case file registered at the KPA under No. 24184), dated 24 October 2012, after deliberation held on 12 November 2013, issues the following

JUDGMENT:

- 1. The appeal of D.F dismissed as impermissible.**

Procedural background:

1. On 7 February 2007 N.S , filed a claim at the Kosovo Property Agency (KPA) behalf of D.A.F, seeking confirmation of property right for the latter over a parcel of land with a surface of 0.14.35 ha in Vishe Selë/Više Sela, Milloshevë/Miloševo, Obiliq/Obilić cadastral parcel no 590 (hereafter: the parcel).
2. In its decision of 24 October 2012 no KPCC/D/A/170/2012, the KPCC decided that the claimant had established her ownership of the parcel and considered the claim grounded.
3. D.A.F received copies of the decision on 12 February 2013 and filed an appeal against the decision on 28 February 2013. This 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.
4. Since the KPCC already decided fully in favour of the appellant the Supreme Court sent out an order dated 29 July 2013, to the appellant in order to have explained what the Appellant's interest in this procedure is.
5. The Supreme Court was informed that this order was delivered to the Appellant on 12 August 2013. On 19 October 2013 the Supreme Court was informed by the KPA that on that date no response of the appellant on this order had been received.

Factual background

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

6. The parcel was registered on the name of C.D, being the late mother of N.S and her sisters S.D.A and D.A.F. After the death of C.D in 1987, the parcel was registered to the name of the oldest daughter S.D.A.

7. S.D.A died in 2003. By decision of the Municipal Court of Pristina no. 569/07 dated 6 February 2008, the parcel was registered to the name of the appellant: D.A.F.
8. The loss of the ability of exercising the property rights derives from the armed conflict between February 1998 and June 1999.
9. The appellant is the rightful owner of the parcel.

Legal reasoning:

Position of the party

10. The Supreme Court therefore understands the appellant's appeal in this way that KPCC seems to have overseen that the appellant claimed the property right over (more than) 2 ha including a house. Thus according to the Possession lists no. 12 and 59. However the decision of the KPCC only covers a surface of 0.14.35 ha.
11. Further the appellant has stated that the KPCC has omitted to acknowledge that there are contestants to the appellant's claim. The appellant states that ever since 2002 the S. brothers, J., N., B., S. and H., have usurped and in 2010 demolished the house. This house being a part of the claim.

Jurisdiction

12. The Appeals Panel of the Supreme Court has jurisdiction over this matter.

Admissibility

13. According to Article 2.1 of Law No. 03/L-006 On Contested Procedure, applicable in the proceedings before the KPA Appeals Panel of the Supreme Court of Kosovo according to Section 13.5 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, a "*court adjudicating in contested proceedings shall decide within the scope of the claims submitted to litigation*". The Supreme Court thus has to establish the exact content of the initial claim.

14. The claim form, filed on 7 February 2007 at the KPA mentions on page 3, in department F the information on the claimed property. Here it says that the claim concerns cadastral parcel no 590, with a surface of 0.14.35 ha in Vishe Selë/Više Sela Milloshevë/Miloševó, Obiliq/Obilić.
15. Added to the claim is among other documents the Possession List no. 12, no 953-1/2009, dated 24 June 2009 of the cadastral municipality Milosevo. This possession list describes parcel 590 as: an Orchard of the first class in Vishe Selë/Više Selo, with a surface of 0.14.35 ha.
16. The sketch on the possession list no.12 shows that a house was part of the parcel 589, this parcel not being part of this claim but of other claims by appellant, being registered as KPA 24178 and KPA 24182. These claims apparently were granted by KPCC decisions no's. KPCC/D/A/186/2013 and KPCC/D/R/126/2011 both dated 13 February 2013.
17. As far as the appellant means to state that the initial claim covered all of the property mentioned on the possession list no 59 of 3 February 2007 (952-1/2007-190) and possession list no 12 aforementioned, the Supreme Court does not agree to that. As far as the Supreme Court could establish, separate claims have been filed by the appellant at the KPA for the different parcels mentioned on both the possession lists.

Conclusion

18. The above leads to the conclusion that the appellant's claim only concerns the parcel of land with a surface of 0.14.35 ha in Vishe Selë/Više Sela, Milloshevë/Miloševó, Obiliq/Obilić cadastral parcel no 590. This being exactly the parcel on which the KPCC has decided in its decision of 24 October 2012 no KPCC/D/A/170/2012 granting the claim fully. Appellant therefore is not admissible in her appeal since she has no legal interest (Article 186 Paragraph 3 LCP).
19. This being the case, the other matters need no deliberation of the Supreme Court.

Legal Advice

20. 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