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-2/11 **Prishtinë/Priština**

13 July 2011

In the proceedings of

B.S.

Claimant/Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Antoinette Lepeltier-Durel, Presiding Judge, Anne Kerber and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/61/2010 (case files registered at the KPA under the numbers KPA56114, KPA56106, KPA56133 and KPA56102), dated 25 February 2010, and KPCC/D/A/77/2010 (case file registered at the KPA under the numbers KPA10497 and KPA10499), dated 16 June 2010, after deliberation held on 13 July 2011 issues the following

JUDGMENT

1- **The appeal of B.S. against the decisions of the Kosovo Property Claims Commission KPCC/D/A/61/2010, dated 25 February 2010, and KPCC/D/A/77/2010, dated 16 June 2010, is dismissed as belated.**

2- **The costs of the proceedings determined in the amount of € 60 (sixty) are to be borne by the appellant, B.S., and paid to the Kosovo Budget within 15 (fifteen) days from the day the judgment is delivered or otherwise through compulsory execution.**

Procedural and factual background:

On 14 December 2007, B.S., acting as a family household member on behalf of his deceased father, D.M., filed a claim with the Kosovo Property Agency (KPA) in regard to the following property:

- cadastral parcel no. 434 in the place called "Ispod Rudine Slatina", a 4th class field, with a surface of 0.33.15 ha (KPA10497; GSK-KPA-A-2/11);
- cadastral parcel 727 in the place called "Ulica Barica", a 4th class field/empty construction land, with a surface of 0.07.54 (KPA10499; GSK-KPA-A-7/11).

On 27 December, B.S., again acting as a family household member on behalf of his deceased father, filed another claim with the KPA, this time regarding the following property:

- cadastral parcel no. 1619 in the place called "Gurina Zarepak", a 7th class field/empty construction land, with a surface of 0.23.30 ha (KPA56133; GSK-KPA-A-3/11);
- cadastral parcel no. 1039 in the place called "Gracko", a 5th class field/empty construction land, with a surface of 0.33.19 ha (KPA56114; GSK-KPA-A-4/11);
- cadastral parcel no. 896 in the place called "Osishte Ulica", a 4th class field/empty construction land, with a surface of 0.67.25 ha (KPA56106; GSK-KPA-A-5/11);
- cadastral parcel no. 773 in the place called "Mala Kanarishte", a 4th class field/empty construction land, with a surface of 0.27.50 (KPA56102; GSK-KPA-A-6/11).

The claimant stated that he was the son of the deceased property owner and that the property

was lost on 1 June 1999 as a result of the circumstances in 1998/99. He requested repossession and compensation for being deprived of the use of the property since that time.

To support his claim he provided the KPA with the following documents:

- Possession List no. 101, issued by the United Nations Interim Administration Mission in Kosovo, Department for Cadastre, Geodesy and Property of the Municipality of Lipjan for the Cadastral Zone Kraishte, registered under the number 676/04 dated 7 July 2004, showing that the claimed property was in the possession of D.S.M., and
- Extract no. 01-203-26 from the Death Register, dated 22 February 2001, issued by the Municipality of Niš for the Municipality of Lipjan/Lipljan, showing that D.M. died on 20 February 2001 in Lipjan/Lipljan.

In 2008 and 2009 KPA officers went to the places where the litigious parcels were allegedly located and put up signs indicating that the property was subject to a claim and that interested parties should have filed their response within a month. They noted that the claimed property in the cases KPA10499, KPA56133 and KPA10497 was not occupied, whereas the property in the cases KPA56102 (cultivated land), KPA56106 (pasture) and KPA56114 (cultivated land) was occupied. The occupants of the properties could not be located. Later on in the proceedings, the KPA checked the notification and could, based on "ortophoto and GPS coordinates", confirm that the notification had been done properly. No respondent filed a reply.

As the surname of the claimant differed from the surname of the property rights holder, the KPA asked the claimant several times (24 February 2009, 17 March 2009, 6 May 2009, 8 September 2009, 3 November 2009) for additional evidence which could prove that indeed he was the son of the deceased property rights holder. He was informed that in case he did not provide the KPA with the requested documents the claim might be dismissed. The claimant agreed to submit the requested documents, however failed to do so.

On 25 February 2010, the KPCC with its decision KPCC/D/A/61/2010 dismissed (amongst others) the claims KPA56144, KPA56106, KPA56133 and KPA56102 on account of lack of proof of family household membership.

On 16 June 2010, the Kosovo Property Claims Commission (KPCC) with its decision KPCC/D/A/77/2010 dismissed (amongst others) the claims KPA10497 and KPA10499 on account of lack of proof of family household membership.

In both decisions claims for compensation were dismissed as under UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 the Commission had no jurisdiction over such claims.

The claimant (henceforth: the appellant) was served with the decision KPCC/D/A/61/2010 as well as with the decision KPCC/D/A/77/2010 on 10 December 2010. He filed appeals in each of the six KPA claims on 17 January 2011, stating that the decisions were incorrect and erroneous. To sustain his appeals he submitted not only the already mentioned Possession List no. 101 but also the decision O.br.233/2008, dated 1 December 2009, issued by the Municipal Court in Lipjan/Lipljan, With this decision the Municipal Court ruled amongst others that B.S., son of the late D.M., was heir of first rank to the cadastral parcels 434, 727, 773 and 1039. Heir of the cadastral parcel 896 was declared B.J., a daughter of the deceased, heir of the cadastral parcel 1619 T.M., a son of the decedent.

The Supreme Court received the appeals on 1 February 2011 and joined them.

Legal reasoning:

The appeal is belated (Art. 186.1 and 186.2 of Law No. 03/L-006 on Contested Procedure).

Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 provides as follows: "*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 through the Executive Secretariat of the Kosovo Property Agency to the Supreme Court of Kosovo an appeal against such decision*".

The appellant was served with both decisions on 10 December 2010. So the time limit ended on 10 January 2011. Yet the appellant filed his appeal only on 17 January 2011. That is outside the time limit. He has given no excuse and the Court cannot detect any reason for the delay.

Therefore the appeal had to be dismissed as inadmissible on procedural grounds (Section 13.3 subparagraph (b) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079).

Accordingly, the Court does not have to decide whether the submitted inheritance decision could have been taken into consideration by the Court. In general, new evidence is not considered by the Court (Section 12.11 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079) unless it is demonstrated that such facts could not reasonably have been known to the party concerned. As the inheritance decision was issued already on 1 December 2009, that means almost 3 months before the first decision of the KPCC, it seems that the appellant could have used this evidence already in the proceedings of the KPCC.

The Supreme Court notes that its decision is not opposed to the inheritance decision of the Municipal Court of Lipjan/Lipljan submitted by the appellant.

Court fees:

Pursuant to Annex III, Section 8.4 of Administrative Direction (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 the 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

- half court fee tariff for the issuance of the judgment (Sections 10.15, 10.21 and 10.1 of AD 2008/2), but not more than € 30, considering that the value of the property at hand could be reasonably estimated as at least € 70.000: € 30.

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

According to Articles 45.1 of the Law on Court Fees, the court fee has to be paid within 15 (fifteen) days. As a consequence of non-payment within the deadline, compulsory execution including a fine as provided by Article 47 of the same law shall be ordered.

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.

Antoinette Lepeltier-Durel, EULEX Presiding Judge

Anne Kerber, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar