

**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-77/12

Pristina, 25 June 2013

In the proceedings of:

**S. V.
as the heir of R.V.**

Claimant /Appellant

vs.

S. B.

Respondent/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Anne Kerber, Presiding Judge, Elka Filcheva-Ermenkova and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/C/132/2011 (case file registered at the KPA under No. KPA 44635), dated 26 October 2011, after deliberation held on 25 June 2013, issues the following

JUDGMENT

1. The decision of the Kosovo Property Claims Commission KPCC/D/C/132/2011 (case file registered at the KPA under No. KPA 44635), dated 26 October 2011, ex officio is annulled and the claim for private property is dismissed due to the lack of jurisdiction.
2. The appellant has to pay the cost of the proceedings in the amount of € 60 (sixty euros) within 90 (ninety) days from the day this judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 25 July 2007, R. V. filed a claim with the Kosovo Property Agency (KPA) seeking confirmation of ownership and repossession of the commercial premises No. 16 with a surface of 30.67 m² located in Shtime/Stimlje on cadastral parcel no.1667/1. He declared that the possession of this immovable property was lost on 12 June 1999 as a result of the circumstances in Kosovo in 1998/1999. The claim was registered at the KPA under No. KPA44635.

In order to support his claim, the claimant submitted the following documents at the KPA:

- Contract no. 645/96 dated 15 November 1996 on joining of funds for the construction of business premises no.16 with a surface area of 30,67 m², located in parcel 1667/1 in the Cadastral Zone of Shtime/Stimlje, concluded between the claimant in the capacity of buyer and the Construction Enterprise “Gragjevinar” from Kralevo in the capacity of seller; the contract did not confirm that the price had been paid in full; the KPA verification team could not verify the claimant’s contract;
- Claimant’s identification card dated 26 September 1983 with number 57383 in his name;
- Identification card no. 57383 dated 26 September 1983, issued by the competent body of internal affairs of Kosovo.

The claimant submitted a number of other documents which, however, were not relevant to this case.

In 2008, the KPA carried out the notification of the claim by placing a sign where the claimed parcel and the commercial premises were allegedly situated. In addition, a re-notification was carried out on 05 May 2010, whereby the notification team found that this immovable property was in the possession of F. B. who claimed the property right.

In order to support his allegations about the property rights over the immovable property that was subject of the claim, the respondent submitted the following document:

- Purchase Contract no. 23/97 dated 20 February 2005, over business premise no.16, with a surface of 30,67 m², located in the parcel 1667/1 of the Cadastral Zone of Shtime/Shtimlje, concluded between the respondent in the capacity of purchaser and Construction Enterprise “Gragjevinar“ from Kralevo in the capacity of seller which was legalised under Vr.nr.717/05 dated 07 March 2005 in the Municipal Court of Ferizaj/Uroševac, whereby these business premises were handed over to the respondent and confirmed that he paid the entire sales price. The KPA verification team positively verified these documents.

With its decision KPCC/D/C/132/2011 dated 26 October 2011, the KPCC rejected the claim reasoning that the claimant had failed to present legally valid facts and evidence for the confirmation of the property right that is subject of his claim. The contract on joining of means between the claimant and the enterprise “Gradjenvar – Kralevo” regarding the construction of the claimed property had not been certified in court and thus could not be verified by the Executive Secretariat. Furthermore the claimant had not produced any evidence on the payment of the purchase price. As the claimant had failed to prove his alleged right of ownership over the claimed property the claim had to be refused.

On 29 March 2012, the KPCC decision was served to the claimant respectively his family, as the claimant had died already in 30 January 2009.

On 26 April 2012, the claimant’s son S. V. filed an appeal, challenging the KPCC decision and alleging that the decision contained erroneous and incomplete ascertainment of factual situation as well as wrongful application of the material law.

He explained the following: The enterprise “Gradjevinar” planned to build on a parcel that allegedly had belonged to the claimant’s family. In order to prevent difficulties, Gradjevinar and the brothers V. came to a settlement agreement which later on was exchanged for three separate contracts on association of funds. The conflict in Kosovo prevented the realization of these contracts. As Gradjevinar delayed the fulfilling of its contractual obligations, the claimant (the appellant’s father) and his brothers wanted to pressure Gradjevinar and especially to prevent the company from selling “their” business premises to other persons, as “it so often happened in practice”. Therefore on 21 March 1997, the claimant and F.B. went to the director of Gradjevinar and informed him that the claimant and his brothers had sold the premises to F. B. In order to convince the director of this scheme, the claimant and his brothers had given 10.000 DM to F. B. that in the presence of the director F. B. now handed over to the claimant. As soon as the Serbian authorities withdrew from Kosovo, F. B. occupied the premises and now claimed that he had bought them from the brothers V. Then in 2005 F. B. bought the premises from Gradjevinar. The appellant asserts that such a breach of trust and friendship of F. B. is not only an abuse of the law but also a grave breach of the principle of good faith and honesty that contractual parties are obliged to comply.

The appellant motions the Court to grant his appeal and confirm his property right by returning the claimed property into his possession.

The respondent (now: the appellee) did not reply.

Legal reasoning:

The appeal is admissible because it was filed within the legal time limit of 30 days from the day the decision was received, pursuant to Section 12.1 of UNMIK Regulation no. 2006/50, as amended by the Law no. 03/L-079 on resolution of claims relating to private immovable property, including agricultural and commercial property.

The appeal, however, in the end is without success as the case is not within the scope of jurisdiction of the KPCC or the Court.

Although the KPCC as a quasi-judicial body by deciding on the merits of the claim already has accepted its jurisdiction, the Court *ex officio* assesses whether the case falls within the scope of its jurisdiction (Art. 195.1 b) of the Law on Contested Procedure). Therefore the decision of the KPCC

insofar as it has been appealed had to be annulled and the claim dismissed (Section 11.4 (a) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, Articles 198, 182 paragraph 2, subparagraph b of the Law on Contested Procedure), not rejected.

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 a right to the 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.

The statement of the appellant, however, shows clearly that the alleged loss of the property is not directly related to the conflict but has been provoked by the tactics of the claimant and his brothers who staged a purchase of the property to a person of the appellee's family, probably his father. The – alleged – loss of the property therefore is not **directly** related to the war but has its roots in a staged purchase. Cases like these have to be adjudicated not by the KPCC respectively the KPA Appeals Panel of the Supreme Court, but by the regular courts.

Therefore, based on the above, the KPCC decision pertaining to the said claim had to be annulled and the claim dismissed since it falls outside the jurisdiction of KPCC and of the Court, according to the provision of Article 198, paragraph 1 of LCP.

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.

These court fees are to be borne by the appellant who submitted an inadmissible claim. 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 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.

Anne Kerber, EULEX Presiding Judge

Elka Filcheva-Ermenkova, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar