

**SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA**

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I PËR APELIT TË AKP-së
ŽALBENO VEĆE KAI**

GSK-KPA-A-066/13

Prishtinë/Priština,

1 October 2013

In the proceedings of:

S. Đ

Claimant/Appellant

vs.

Z.U

Respondent/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/A/149/2012 (case file registered at the KPA under number KPA 35303), dated 19 April 2012, after deliberation held on 1 October 2013, issues the following:

JUDGMENT

1. The appeal of S. Đ is rejected as unfounded.
2. The decision of the Kosovo Property Claims Commission KPCC/D/A/149/2012, dated 19 April 2012, as far as it regards the case registered at the KPA under numbers KPA 35303, is confirmed.
3. Costs of the proceedings determined in the amount of € 60 (sixty) are to be borne by the appellant and have to be paid to the Kosovo Budget within 60 (sixty) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 19 April 2007, S. Đ filed a claim as one of the members of the household, at the Kosovo Property Agency (KPA), seeking repossession of a parcel located in Deçan/Deçane at a place called Ratiš e Ulët/Donji Ratiš, parcel No. 46, with a surface of 4 ha, 81 ar and 55 m². She claimed that her late father S.Ć, who passed away in 2006, was the co-owner of the parcel with 1/3 share. She asserted that the property was usurped by Z.U who cleared the parcel from forest and turned it to arable land. She sought for compensation of the damage and repossession.

To support her claim, the claimant provided the KPA with the following documents:

- Possession List No. 72 (or else 172, illegible), issued by the Municipal Geodesy Office in Deçan/Decane dated 09/02/1967;
- A copy of the certificate issued by Municipal Assembly of Deçan/Deçane No 07-952/342 dated 6 March 1978;
- The inheritance decision issued by Municipal Court in Kraljevo, dated 19/07/2006 indicating S.C. (not as Ć.) as one of the heirs of S.Ć with 1/5 share;
- Marriage certificate of S.Ć and V.Đ;
- Death Certificate of S.Ć, dated 08/10/2008;
- Tax records of 06/03/1978.

The KPA positively verified the documents supporting the relationship of the claimant to the alleged property right holder.

The KPA notification report dated 5 November 2010 reflects the nature of the land as forest which was occupied by Z.U. Z.U, while claiming to have legal rights over the property, refused to sign a notice of participation.

According to verification report of KPA, dated 21/07/2011, following the aerial photographing, the parcel number 46 renumbered as parcel no 126 and it is evidenced in possession list number 50, recorded in the name of Ć.N. (M.). It was also noted that the last name of the registered owner was put mistakenly as Sh. which should be Ć..

The Executive Secretariat of the KPA contacted the claimant upon finding that the alleged parcel was registered under the name of N.Ć. According to the Annex of the Claim Processing Report to the KPCC dated 23 March 2012, the claimant stated that N.Ć. is her uncle who registered all parcels in his name in the cadaster whereas there was a family dispute over the claimed parcel. She did not remember when this change happen or whether her father could have sold the property to her uncle; however, she confirmed that such changes had happened a long time ago because she left Kosovo with her family in 1982. She also confirmed that she did not lose the possession of the parcel in 1999 and that she did not hold another document in relation to property to submit.

On 19 April 2012, the KPCC with its decision KPCC/D/A/149/2012 dismissed the claim due to lack of jurisdiction. The KPCC stated that the claimant submitted the possession list no 172 (or 72- not clear from the copy of the PL) from 1967; however the Executive Secretariat *ex officio* found out that the claimed parcel is not only renumbered and found in possession list no 50 but also listed in the name of claimant's uncle. The KPCC relied on the facts that the claimant acknowledged that there was a long standing family dispute over the parcel and that she left Kosovo in 1982 and her uncle subsequently registered all the parcels in his name. The Commission concluded that the claimant lost the possession as a result of family dispute and thus decided that the claim falls outside of its jurisdiction. The KPCC further noted that the Respondent (Z.U) who initially claimed legal rights over the parcel explained that he no longer uses the claimed property and that it had been sold by the children of the claimant's uncle to one of his neighbors.

The decision was served on the claimant on 4 December 2012. On 4 January 2013, she filed an appeal. She asked a new decision to be made and to be exempted from the payment of all taxes since she has no income and suffers from chronic disease. She did not provide any document to support her request as to exemption from costs.

The decision was served on Z.U. on 24 April 2013. Z.L. (the Executive Secretariat refers him as the son of U.) responded to the appeal, on 7 May 2013, stating he knew nothing about the property and he did not buy anything from those people who addressed the matter against him. He further mentioned that he did not want to be invited with regard to this case.

Legal reasoning:

The appeal was filed in time. It is admissible but not founded.

The Supreme Court agrees with the KPCC's findings that the claim falls outside of the jurisdiction of KPCC.

This is so because 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.

In the context of the established facts, the possession of the property was lost due to a long standing family dispute which took place before the conflict, as the claimant stands. The claimant as one of the heirs of the deceased S.Ć. claims 1/5 of the shares of her father's shares (allegedly amounts to 1/3 of the whole parcel as one of the co-owners) in the claimed parcel. She left Kosovo in 1982 and confirmed that she did not lose the possession in 1999. It is obvious from the documents and statements within the file of KPA that the dispute regarding who had the right to register the property in question has started long before the eruption of the armed conflict of 1998/1999. The dispute was neither caused nor influenced by the war. It derives directly from an ownership dispute between the members of Ć. family and has no aspect of a conflict-related claim. Therefore, the claim is out of the jurisdiction of the KPA and the KPCC. The conclusion of the KPCC which dismissed the claim due to lack of jurisdiction was correct.

Consequently the appeal according to Section 13.3 (c) of UNMIK-Regulation 2006/50 as amended by Law No. 03/L-079 had to be rejected as unfounded and the decision of the KPCC confirmed as far as it is related to the case which had to be decided upon in this judgment (KPA 35303).

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 issuance of the judgment (10.21, 10.15 and 10.1 of AD 2008/2): € 30

These court fees are to be borne by the appellant who loses the case. The appellant did not provide any document to support her statement as to lack of financial means. According to Article 45.1 of the Law on Court Fees the deadline for fees' payment is 15 (fifteen) 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 the Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

The claimant may seek for a relief as to the parcel in question before the competent basic court.

Elka Filcheva-Ermenkova, EULEX Presiding Judge

Sylejman Nuredini, Judge

Esma Erterzi, EULEX Judge

Urs Nufer, EULEX Registrar