

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

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

GSK-KPA-A-50/12

Prishtinë/Priština,
17 October 2013

In the proceedings of:

A.H
Represented by M.H
Appellant

v.s

V.M
Claimant/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Elka Ermenkova, Presiding Judge, Esma Erterzi and Sylejman Nuredini, Judges, deciding on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/112/2011 (case files registered at the KPA under No: KPA56642), dated 22 June 2011, after deliberation held on 17 October 2013, issues the following:

JUDGMENT

- 1. The appeal of A.H, from village ZH., Municipality of Gjilan/Gnjilane, is accepted.**

2. **The Decision of Kosovo Property Claims Commission KPCC/D/A/112/2011, dated 22 June 2011, as far as it regards the case registered under No. KPA56642, is annulled, as rendered in the absence of jurisdiction.**
3. **The claim of V.M, registered as KPA56642, is dismissed as inadmissible.**
4. **The claimant is obliged to pay the costs of proceedings in amount of 60 € (sixty euros) within 90 (ninety) days from the day the judgment is delivered or otherwise through compulsory execution.**

Procedural and factual background:

On 26 November 2007, V.M, in the capacity of family member, filed a claim with Kosovo Property Agency (KPA) claiming to recognize his father, D.M, as the owner of the cadastral parcel nr. 444, at the place named “Tërska”, in surface of 0.30.11 ha, field, of the Cadastral Zone of Zhegër/Žegra, Municipality of Gjilan/Gnjilane. He alleged that the possession over the immovable property was lost on 17 June 1999, due to circumstances that took place in Kosovo in 1998/1999; claiming confirmation of property right and repossession.

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

- Possession list nr. 115 from the Cadastral Institute of Republic of Serbia, Immoveable Cadastral Center of Municipality of Gjilan/Gnjilane, dated 23 April 2002. The property right holder over the cadastral parcel which is subject of the claim is shown as D.M,
- Death certificate for D.M, dated 23 January 2008, issued by Municipality of Vranje, Republic of Serbia,
- Birth certificate for V.M, dated 23 January 2008, issued by Municipality of Vranje, Republic of Serbia,

The KPA in 2008 made the notification concerning the claim by placing a sign at the place where the alleged property was located. In 2010, the KPA again made a notification concerning the claim, by publishing the claim in Notification Gazette no. 6 and in the UNHCR Property Office Bulletin. Both, the Gazette and the List were left to an owner of a shop in Prelepnica, who acknowledged making them available to the interested parties. The same publications were left in the entrance and exit of village Zheger and few in Public office of Gjilan/Gnjilane.

Considering that nobody had responded, the claim was dealt as uncontested, thus the KPCC through its decision KPCC/D/A/112/2011, dated 22 June 2011, approved the claim, in which it decided that the claimant proved that the property right holder D.J.M was the parcel’s owner.

On 11 November 2011, the KPCC decision was served to the claimant.

KPCC decision was served on M.H on 28 February 2012.

On 2 March 2012, M.H on behalf of his son A.H (Hereinafter Appellant) filed an appeal with KPA, wherein he stated that A.H purchased parcel 444, at the place named “Tërska”, in surface of 0.30.11 ha, field, cadastral zone of Zhegër/Žegra, Municipality of Gjilan/Gjnilane. He submitted the Immovable Property Rights Certificate UL-70403026-01063, dated 12 May 2011 indicating P.S as the registered owner of parcel 444; the sale contract concluded between the seller P.S, from Zhegër/Žegra, and A.H which was certified before the Municipal Court of Gjilan/Gjnilane, Vr. No. 3433/11, dated 20 September 2011; the Immovable Property Rights Certificate UL-70403026-01064, dated 20 June 2011 indicating A.H as the new owner of the said parcel.

The appeal was served to the claimant V.M.

On 4 April 2012, V.M (hereinafter: the Appellee) filed a response to the appeal. In the response, he challenged the registration of the land that belonged to his father under the name of P.S (his nephew), respectively the validity of the sale contract concluded between P.S and A.H. He maintained that the loss of possession of the property was due to the circumstances directly related to or deriving from the armed conflict that occurred between 27 February 1998 and 20 June 1999.

On 26 June 2013, the judge in charge issued a request to the Cadastre of Municipality Gjilan/Gnjilane asking for the history and the basis of the change of the registered owner of parcel no 444. In the response of Cadastre, dated 5 July 2013, it is mentioned that parcel no 444 was registered in the name of M.J.D pursuant to possession list no 115. However, the land is transferred to the new owner, based on the inheritance decision no O.br. 74/2011 dated 20 May 2011 whereas it is registered under the name of the new buyer A.H according to the sale contract. The Cadastre provided the documents related to this change in particular the inheritance decision no O.br.74/2011 dated 7.4.2011.

On 16 August 2013, M.H submitted the power of attorney granted by his son A.H.

Legal reasoning:

The appeal is admissible.

According to section 12.1 of the UNMIK Regulation 2006/50 as amended by the Law No. 03/L-079, on the resolution of claims relating to private immovable property, including agricultural and commercial property, wherein a party may file an appeal within thirty (30) days of the notification of the decision.

The appeal is admissible although the appellant did not participate in the proceedings before the KPCC. Such a circumstance may not be to the detriment of the appellant because in reality he was not duly notified of the claim. The notification was done by publication of the claim in Notification Gazette of KPA and in UNHCR bulletin. This, however, constitutes “reasonable efforts” to notify regarding the claim as foreseen by section 10.1 of the Regulation, only in some cases: for example in some civil proceedings it is acceptable to summon a person with a publication in the State gazette if the person has left his/her known address and did not provide a new one. However, this solution cannot be always acceptable in the proceedings in front of the KPA as the respondent is not known in advance and in the beginning of the proceedings. Therefore it cannot be accepted that the appellant was aware of the claim and his appeal is admissible.

Pursuant to section 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, the claimant is entitled to an order from the Commission for repossession of the property if, the claimant shall not only provide evidence the ownership of private immovable property, but also she or he are currently unable to exercise the ownership rights due to circumstances directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999.

The claimant as one of the member of the family household in an uncontested claim at first instance level alleged that he lost the possession of the parcel no 444 due the circumstance related to or resulting from the circumstances of the armed conflict. He submitted the possession list no 115 showing his father as the registered owner and KPCC granted the claim.

It is not contested that D.M was the registered owner of parcel no 444 in this possession list no 115. However, with the submission of the appeal the matter became contested. The documents submitted to the Supreme Court by the appellant and the Cadastre show that P.S was declared as the sole inheritor of D.M by the inheritance decision of Municipal Court in Gjilan/Gnjilane. The Immovable Property Rights Certificate UL-70403026-01063, dated 12 May 2011, shows P.S as the registered owner of the said property whereas he sold it to the appellant A.H with a sale contract which is verified by the Municipal Court in Gjilan/Gnjilane. According to the Immovable Property Rights Certificate UL-70403026-01064, dated 20 June 2011, A.H is the registered owner of the claimed property.

The Appellee challenged the legality of the change occurred in the Cadastre; however he did not provide evidence either to support his allegations as being the inheritor of D.M instead of P.S or the loss of the possession of the property due to the circumstances related to or deriving from the armed conflict of 1998/1999. According to the documents verified in the Municipal Court, the loss of the property derives from a family dispute. The change in the Cadastre is based on the inheritance decision and the sales contract both bearing the year of 2011. The validity and the legal effect of both the inheritance decision and the sales contract should not be analysed in the current proceedings, because the claim is outside of the jurisdiction of the KPCC and the KPA Appeals Panel. The alleged rights or the absence of such, deriving or negated by the inheritance decision and/or the sales contract, may be pursued before the competent regular courts.

Since the claimant did not prove that he is the inheritor of D.M, the registered previous owner of the claimed property and subsequently failed to establish the fact that he is unable to exercise the rights over that property due to the circumstances that are directly related or as result of the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999; pursuant to section 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, this legal matter does not fall within the jurisdiction of the concerned body and subsequently of the Supreme Court. Consequently, the KPCC decision had to be annulled in regard to the claim at hand and the present claim be dismissed due to lack of jurisdiction of the KPCC and the Court according to the provision of article 198, para 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 which is in maximum 30 €, determined in that amount according to Sections 10.15 in conjunction with Section 10.1 of AD 2008/2 of the Kosovo Judicial Council on Unification of Court fees.

These court fees are to be borne by the appellee, who filed an inadmissible claim. Furthermore, the claimant/appellee was aware of this and yet has filed a claim. According to Article 46 of the Law on Court

Fees, the deadline for fees' payment by a person with residence or domicile abroad may not be less than 30 days and no longer than 90 days. The Supreme Court decides that, in the current case, the court fees shall be paid by the appellant within 90 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 within 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 legal remedies.

Elka Filcheva-Ermenkova, EULEX Presiding Judge

Sylejman Nuredini, Judge

Esmá Erterzi, EULEX Judge

Urs Nufer, EULEX Registrar