

**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-218/11

Prishtinë/Priština, 24 August 2012

In the proceedings of

S.(H.)R.

Respondent/Appellant

vs.

L.N.

Claimant/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/A/44/2009 (case file registered at the KPA under the number KPA00258), dated 11 June 2009, after deliberation held on 24 August 2012, issues the following

JUDGMENT

- 1- The appeal of S.(H.)R. is rejected as ungrounded.

- 2- The decision of the Kosovo Property Claims Commission KPCC/D/A/44/2009, dated 11 June 2009, as far as it regards the case registered under No. KPA00258 is confirmed.

- 3- Costs of the proceedings determined in the amount of € 530 (five hundred thirty) are to be borne by the appellant and have to be 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 16 January 2007, L.N. filed a claim with the Kosovo Property Agency (KPA), seeking repossession of his property. The claimant establishes that the immovable property was lost as a result of the circumstances in 98/99 in Kosovo and states that the date of loss is 15 June 1999. He asserted to be the (co-)owner of a parcel located in the municipality of Prishtinë/Priština, in Llojza e Vjeter, Sofali/Sofalija, possession list number 155, cadastral zone Sofali/Sofalija, parcel number 691, with the surface 0He, 9Ar, 89m² and stated that the place was occupied.

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

- A signed sales contract from 20 June 1988 identifying him as the co-purchaser of the property;
- Possession list No. 155, issued on 14 April 1995 by Republic Geodesy Office, Department For Immovable Property, Cadastral Municipality of Sofali/Sofalija, Republic of Serbia, showing that L.N. was the co-owner of the claimed parcel;
- Possession list No. 155, dated 22 June 2004, from United Nations Interim Administration Mission in Kosovo, cadastral zone Sofali/Sofalija, showing that the claimed parcel was registered under the name of L.N. as a co-owner;

- Copy of a plan from the Municipality of Pristina, cadastral municipality Sofali/Sofalija, dated 22 June 2004, by which it is verified that L.N. is dhe co-owner of ½ of claimed property – parcel no. 691.

On 13 March 2008, the KPA notification team went to the place where the claimed parcel allegedly was located and put up a sign indicating that the property was subject to a claim and that interested parties should have filed their response within 30 days. The property was found occupied by S.R. (the respondent) who was present at the property and claimed a legal right to the property. The KPA notification team revisited the claimed property parcel no. 691 in Prishtinë/Priština, Llojza e Vjeter, Sofali/Sofalija on 3 February 2010 and confirmed that the notification of property was done properly based on GPS Coordinates and Ortophoto.

The possession list no. 155 was verified by the KPA.

On 11 June 2009, the Kosovo Property Claims Commission (KPCC) with its decision KPCC/D/A/44/2009 found that the claimant had established joint-ownership over the property, as the claimant had provided a verified possession list and a purchase contract.

The decision was served on the respondent on 14 November 2011. On 2 December 2011 the respondent (henceforth the appellant) filed an appeal with the Supreme Court, challenging the KPCC's decision on the grounds of serious misapplication of the applicable material and procedural law and erroneous and incomplete determination of the facts.

The appellant declared that he is the owner of different parcels no. 705/1, no. 705/3, no. 706/1, no. 707/1 at a place called "Strana e nalte" according to an Inheritance Decision T.nr.50/2001 and the owner of parcels no. 692/1 and 693 located at a place called "ish Velika Strana", Cadastral Municipality of Sofali/Sofalija, possession list no. 76. The appellant didn't submit any of the mentioned evidence.

The appeal was served to the claimant (henceforth: the appellee) on 8 December 2011. The appellee did not react.

Legal reasoning:

The appeal is admissible. It has been filed within the period of 30 days prescribed in Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079.

However, the appeal is ungrounded. The decision of the KPCC is correct. The Court finds neither incomplete establishment of facts nor erroneous application of the material or procedural law.

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. As the claimant states that the date of loss is June 1999, the claim involves circumstances directly related to or resulting from the armed conflict in Kosovo.

The Supreme Court agrees with the KPA that the Respondent/Appellant who is currently occupying the property, while claiming a legal right of the property, did not provide documentation or other information in support of such right neither at the time of notification of the property nor with the appeal, despite of being given the opportunity to do so. In the appeal the appellant states to be the owner of several parcels no. 705/1, no. 705/3, no. 706/1, no. 707/1 at a place called “Strana e nalte” and the owner of parcels no. 692/1 and 693 located at a place called “ish Velika Strana”, Cadastral Municipality of Sofali/Sofalija, with numbers different from the parcel claimed by the appellee. So these parcels have nothing to do with the claim itself, which refers to parcel no. 691. The appellant refers to a possession list with no. 76 which he doesn’t provide and which is also different in number compared to the possession list no. 155 relevant for the claim (KPA00258) in front of KPCC.

From the above mentioned facts, it results that the factual situation in this legal case was fairly and completely established and that the confirmation of the KPCC decision has not been brought to question by any valid evidence.

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 (10.21 and 10.1 of AD 2008/2), considering that the value of the property at hand could be reasonably estimated as being more than € 90.000: € 500 (€ 50 + 0,5% of € 90.000 but not more than € 500).

These court fees are to be borne by the appellant who loses the case. According to Article 45 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 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

Philip Drake, Chief Registrar to the Assembly of the EULEX Judges