

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

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I PËR APELIT TË KPA-së
ŽALBENO VEÇE KPI**

GSK-KPA-A-1/11

Prishtinë/Priština

7 July 2011

In the proceedings of:

J.B.

Appellant

vs.

M.S.

Claimant/Appellee

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/19/2008, (case file registered at the KPA under the number KPA 44306), dated 20 June 2008, after deliberation held on 7 July 2011, issues the following

JUDGMENT

- 1- The appeal of J.B. is accepted as grounded.

- 2- The decision of the Kosovo Property Claims Commission KPCC/D/A/19/2008, dated 20 June 2008, in the case registered under the No. KPA 44306 is quashed.

- 3- The claim filed by M.S. on 28 March 2007, registered at the KPA under the number KPA 44306, is rejected.
- 4- Costs of proceedings determined in the amount of 80 Euros (eighty Euros) are to be borne by the appellee, M.S., and to be paid to the Kosovo budget within 90 days from the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 28 March 2007, M.S.S. filed a claim with the Kosovo Property Agency (KPA) seeking for property right confirmation and repossession over the parcel of land located at a place called “Karacica”, cadastral zone of Sllovi/Slovinje, in the municipality of Lipjan /Lipljan, with a surface of 0, 08, 57 ha. He asserted that his late father, S.S., was the owner of this property, that he acquired it through inheritance and that the parcel was unlawfully occupied by an unknown person.

To support his claim, he provided the KPA with the possession list No. 99 of the municipality of Lipjan /Lipljan, cadastral zone of Sllovi/Slovinje, dated 13 June 2007, showing that the claimed parcel was registered under the name of S.S., and the inheritance decision issued by the Municipal Court of Obrenovac on 15 September 2000, holding that S.S.’s heirs are his wife R.S. for ¼ and his son M.S. for ¾. He also submitted his father’s death certificate dated 24 September 1999.

In its notification report, the KPA noted that the litigious parcel was cultivated and occupied but that, due to the lack of cooperation of the neighbors, it could not identify the occupant who was not present. The KPA processed to the notification of the claim by setting up a poster on the parcel on 23 October 2007 and to the publication of the claim on 5 November 2007. Since no respondent filed a reply within the 30 days deadline after the publication, the claim was considered as uncontested.

The verification report of the KPA ascertained that the submitted documents were found and confirmed by the Municipal Court of Obrenovac and by the Cadastral Office. The Executive Secretariat included in the case file the certificate for the immovable property rights with regard to the claimed parcel, dated 27 December 2007, which indicated S.S. as owner.

In the claim processing report to the KPCC, it is mentioned that the loss of possession occurred on 16 June 1999 and was due to the overall situation in Kosovo.

By its decision of 20 June 2008, the Kosovo Property Claims Commission (KPCC) decided that the claimant had established ownership of $\frac{3}{4}$ of the claimed property and was entitled to possession of the said property and that any person occupying the property had to vacate it within 30 (thirty) days of the delivery of the decision.

The claimant received the KPCC's decision on 18 February 2009 and filed a request for repossession on the same day.

On 25 October 2010, J.B. (herein after the appellant) filed an appeal with the Supreme Court against the aforementioned decision which, according to him, involved a fundamental error or serious misapplication of the applicable material law and was taken upon an erroneous or incomplete determination of the facts. He had been served with the KPCC's decision as "interested party" on 30 September 2010.

He explained that he had bought the claimed property on 22 December 2009 with the contract No. 3862/09 which he submitted with his appeal. He also provided the Supreme Court with a receipt of the payment of the purchase. He added that he had never used the parcel before the purchase contract.

Answering to the order issued on 11 April 2011 by the Supreme Court, the appellant submitted a dated and certified contract and the power of attorney having allowed R.S., seller, to sell the parcel on her behalf and on behalf of the appellee as well.

A registered mail was addressed to the appellee on 25 January 2011 but since the Supreme Court had no evidence that this mail containing the appeal was delivered, by letter of 11 April 2011, the Executive Secretariat was asked to indicate whether the appeal was really delivered to the appellee, if not, to process to the service of the appeal on the appellee. The Executive Secretariat processed to a second service of the appeal which was received by the appellee on 20 April 2011. The appellee indicated that he did not wish to file any reply and he did not within the deadline.

Legal reasoning:

The appeal is admissible (1) and grounded (2). Thus the KPCC's decision shall be quashed. The Supreme Court notes that, whereas the KPCC's decision is fully correct given the facts that were known at the time of the first instance proceedings, new facts which could not be known at that time have been submitted in support of the appeal and shall be taken into consideration in the present judgment. Indeed, the appellant has submitted a valid purchase contract of the litigious parcel which was signed after the issuance of the KPCC's decision and which, consequently, hinders the execution of the KPCC's decision.

1- The appeal is admissible.

According to Section 12.1 of 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, a party may submit an appeal within thirty (30) days of the notification of the decision.

Pursuant to Section 10.3 of UNMIK Regulation 2006/50 as amended by the Law No. 03/L-079: "*A person with a legal interest in the claim who did not receive notification of a claim may be admitted as a party at any point in the proceedings.*"

In the present case, the claim was not served on the appellant. The KPCC's decision was served on the appellant on 30 September 2010.

The Court considers that he became aware of the claim and of the KPCC's decision when he was served with that decision. Therefore, the Court concludes that he timely filed his appeal on 25 October 2010.

Since the appellant pretends that he is the owner of the claimed property, he has a legal interest in the claim.

Thus his appeal is admissible.

2- The appeal is grounded.

Section 12.3 of UNMIK Regulation 2006/50 as amended by the Law 03/L-079 on the resolution of claims relating to private immovable property, including agricultural and commercial property reads:

“The appeal may be filed on the grounds that:

- (a) The decision involves a fundamental error or serious misapplication of the applicable material or procedural law; or*
- (b) The decision rests upon an erroneous or incomplete determination of the facts”.*

Section 12.11 of the same regulation reads:

“New facts and material evidence presented by any party to the appeal shall not be accepted by the Supreme Court unless it is demonstrated that such facts and evidence could not reasonably have been known by the party concerned...”

With his appeal, J.B. brings a new fact consisting of the purchase of the parcel at hand and claims to be recognized as the lawful property right holder. Nevertheless, the purchase contract, submitted by the appellant, occurred on 22 December 2009, that is to say more than 18 months after the issuance of the KPCC's decision dated 20 June 2008. The KPCC could not take into consideration a fact that had not yet occurred and could not thus examine whether the property right over the parcel had been validly transferred to a new owner. Moreover, even the appellant could not be a party before the KPCC since, at the time of the proceedings before this Commission, he was not yet in the position to claim any right over the said parcel.

No other argument has been presented to challenge the KPCC's decision which was fully right at the time it was issued. As a result, the recognition of the appellee's property right was correct and the appellee could validly sell the property at stake. Even the appellant could have rested on this decision, if he had knew it, in order to be sure that he could buy the property from the appellee.

However, the Supreme Court is convinced that the lawful property right holder has changed between the issuance of the KPCC's decision and the time of the present appellate proceedings. This new fact leads it to consider that the KPCC's decision does not any more rest upon a complete and actual determination of the facts.

Section 20 of the Law on Basic Property Relations (Official Gazette SFRY, No.6/80) reads:

“The property right can be acquired by law itself, based on legal affairs and by inheritance. The ownership right can also be acquired by decision of the government authorities in a way and under conditions determined by law.”

The contract of sale is one of the legal relations that allow acquiring the property right.

In the present case, the appellant provided the Court with the written contract of sale of the litigious parcel Ov No. 3862/2009, certified by the Municipal Court of Lipjan/Lipljan on 22 December 2009, signed by R.S. as seller, with a certified power of attorney to sell the parcel on behalf of the appellee. The appellee has not contested this contract.

Such document constitutes valid evidence that a transfer of the property right over the parcel at hand has occurred on 22 December 2009.

For these reasons, the Supreme Court holds that the appeal is grounded and that the KPCC’s decision, since it rested upon an incomplete determination of the facts as foreseen by section 12.1 (b) of UNMIK Regulation 2006/50 as amended by the Law 03/L-079, shall be quashed.

Also from the above reasoning, the Supreme Court, modifying the KPCC’s decision pursuant to Article 13.3 (a) of UNMIK Regulation 2006/50 as amended by the Law 03/L-079, concludes that the ownership claim filed with the KPA by M.S. on 28 March 2007 is rejected.

Costs of the proceedings:

Pursuant to Article 8.4 of Administrative Direction (AD) 2007/5 as amended by the Law No. 03/L-079, the parties are exempted from costs of proceedings before the Executive Secretariat and the Commission.

However such exemption is not foreseen for the proceedings before the Supreme Court.

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 Supreme Court.

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 (Sections 10.21 and 10.1 of AD 2008/2), considering that the value of the property at hand, as indicated in the purchase contract is comprised between 5,001 and 10,000 €: 50 €.

These court fees are to be borne by the appellee that loses the case.

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 from the day the judgment is delivered to him.

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.

Antoinette Lepeltier-Durel, EULEX Presiding Judge

Anne Kerber, EULEX Judge

Sylejman Nuredini, Judge

Holger Engelmann, Eulex Registrar