

**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-086/12**

**Prishtinë/Priština, 17 January 2013**

In the proceedings of:

**C. M.**

***Respondent/Appellant***

vs.

**V. Š.**

***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/C/146/2012 (case file registered at the KPA under No. KPA17565), dated 29 February 2012, after deliberation held on 17 January 2013, issues the following

**JUDGMENT**

- 1- **The appeal of C. M. is rejected as unfounded.**
  
- 2- **The decision of the Kosovo Property Claims Commission KPCC/D/C/146/2012, dated 29 February 2012, as far as it regards the case registered under No. KPA17565 is confirmed.**
  
- 3- **The appellant has to pay the costs of the proceedings which are determined in the amount of € 292, 50 (two hundred ninety two Euros and fifty Cents) within 15 (fifteen) days from the day the judgment is delivered or otherwise through compulsory execution.**

**Procedural and factual background:**

On 16 November 2006, V. Š. filed a claim with the Kosovo Property Agency (KPA), seeking to be recognized as the owner of a property located Pejë/Peć, JNA street 171, parcel No. 262/2, a commercially used parcel with a building of 1990 and with a surface of 5 ar 70 m<sup>2</sup>. He requested repossession. He explained that his father had been the owner of the premises, that he had lost them on 14 June 1999 and that the loss was the result of the circumstances 1998/1999 in Kosovo. To support his claim, the claimant provided the KPA with the following documents:

- Decision P.br. 13/68 of the Municipal Court of Pejë/Peć, issued on 3 April 1968; with this decision the Court decided in the proceedings of V. (V.) Š. vs. M. (M.) V. based on acceptance that the claimant V. (V.) Š. was the owner of parcel no. 262/2 with a surface of 5 ar 70 m<sup>2</sup> and the residential building situated on that parcel; as the parties waived their right to appeal, the decision became final on 3 April 1968;
- Copy of Possession List No. 186 issued by the Municipal Geodesy Administration of Pejë/Peć on 18 July 1984 for the cadastral zone of Bellopojë/Belo Polje, showing that parcel no. 262/2 with a surface of 5 ar 70 m<sup>2</sup> was registered in the name of M. (M.) V.;
- Record No. 32/93 of the inspection of the construction premises “owned by Š. V.” in JNA Street No. 171 — of 7 June 1993.

Later on in the proceedings, the KPA received – amongst others – the following documents:

- Letter of V. Š. to the Housing and Property Claims Commission of 15 June 2005 with which the claimant – living then in the Collective Center “Dom učenika” in Kolasin – explains to the Commission that part of the building is destroyed and that the business premises are usurped;
- Certified Decision of the Housing and Property Claims Commission (regarding Cover Decision HPCC/D/172/2005/c of 24 February 2005) regarding JNA 171 in Pejë/Peć, parcel No. 262/2, claim No. DS501444&DS501436, with which the Commission declared that at the date of the destruction of the residential property the claimant satisfied the requirements for an order of repossession;
- Decision on Reconsideration Request of 5 April 2006 (regarding Cover Decision HPCC/REC/56/2006 of 18 February 2006) in regard to the same parcel and the same claims with which the Commission ordered that the claimant was to be given possession of the claimed property;
- Report of the Municipal Administration of New Belgrade of 23 March 2004 on a copy of a power of attorney allegedly given on 8 December 2000 by M. V.; the report confirms that for this date no confirmation of such a power of attorney was given and that the stamp used for confirmation was that of the Municipality of Cacak;
- Extract from Possession List No. 211 of 23 April 1976, showing that M. M. V. was in possession of parcel No. 262/2;
- (private) contract on mutual construction of 11 February 1980 between five members of the Š. family with which they agreed on building a family housing building on the parcel No. 262/2 owned by V. Š..

The KPA could verify Decision No. 13/68 of 3 April 1968 as well as Possession List No. 186, a new Possession List No. 186, however, showed that C.M. was the owner of the parcel.

After the notification, C. M.(respondent) responded to the claim. He stated that he had bought the parcel from M. (M.) V.

He provided the KPA with the following documents:

- Copy of a power of attorney, certified on 8 December 2000, by which M. M. V. authorized R.(R.) R. to sell cadastral parcel No. 262/2, registered in Possession List No. 186, a house with a surface of 70 m<sup>2</sup> and a yard with a surface of 5 ar and 46 m<sup>2</sup>;
- Agreement on the Sale of Real Estate, Vr. 1985/00, of 7 December 2000, with which M. M.V., represented by R. R. R., sold parcel No. 262/2 to C. Sh. M. for 85.000 DM, 42.500 of which had to be paid on 7 December 2000, the rest on 31 December 2000; the agreement was certified on 23 December 2000;

- Receipt with which B.V. Š. declared that on 5 February 2002 he on behalf of M. M.V. had received € 21.250 from the respondent – certified in the Municipal Court in Pejë/Peć on 5 February 2002, VR.br. 999/02;
- Certificate issued by the Ministry of Internal Affairs of Montenegro – Security Center Berane – on 22 August 2001, according to which B. V. Š., with temporary residence address in Kolasin, Pazanj Settlement, displaced person from KiM, had reported the loss of his documents (ID card and driver's license);
- Decision of the Municipal Assembly of Pejë/Peć – Directorate for Cadastre, Geodesy and Property Issues - of 30 August 2001, according to which the request of C. M. to be registered as the owner of the litigious property was granted on base of the sales contract No. 1985/00, dated 13 December 2000;
- Extract of Possession List No. 186 of 13 November 2000, showing that the litigious property was registered in the name of V. (M.) M.

The KPA could verify that the change in the Possession List No. 186 was done on the base of the sales contract no. 1985/00. The contract as well as the receipt VR.br. 999/1 of 5 February 2002 could be verified. The KPA also found a Certificate for the Immovable Property Rights – UL-71611004-00186 – issued by the Cadastral Agency of Kosovo on 30 March 2010, showing that C. (Sh.) M. was the owner/Possessor of the litigious parcel. The KPA, however, could not verify the power of attorney allegedly given by M. V. An officer of the Municipal Registry of Novi Beograd confirmed that the Power of Attorney was not registered there. As the (rectangular) stamp was the stamp of the Municipality of Cacak, whereas the seal was the seal of Belgrade, the officer concluded that the Power of attorney was a forgery.

The claimant declared that his father, who had died on 17 December 1997 in Prishtinë/Priština, had bought the parcel with contract of 24 May 1966 and acquired ownership with judgment No 13/68 of 3 April 1968. He reconfirmed that his father had used the parcel until his death and that afterwards he and his two brothers as well as his mother had used it. He stated that the purchase contract submitted by the claimant was a forgery as well as the receipt declaring that his son had received the rest of the purchase price. He stated that his son's ID card and driver's license had been stolen in 2001 and that this had been reported to the Ministry of Internal Affairs of Montenegro. The claimant furthermore informed the KPA that he had initiated proceedings before the Municipal Court of Pejë/Peć in order to have the purchase contract of 7 December 2000 – Ov.br. 1985/00 – annulled. He provided the KPA with the first page of the submission of his lawyer in this case (C. 10/09). The KPA could verify that this procedure was ongoing in the Municipal Court of

Pejë/Peć. Minutes of the hearing state that the procedure is suspended until the finishing of inheritance procedures.

On 29 February 2012, the Kosovo Property Claims Commission (KPCC) with its decision KPCC/D/C/146/2012 granted the claim as the claimant in his capacity as a family household member by submission of the final and genuine judgment of the Municipal Court of Pejë/Peć had proven the property right of his father over the claimed property. As accordingly M. V. had not been the owner of the property at the time of the alleged sale and therefore could not have validly transferred ownership rights to the respondent, the respondent did not have a valid defence against the claimant's ownership claim.

The decision was served on the respondent on 22 June 2012. On 4 July 2012, 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. He repeated his statements before the KPCC and added that because of the purchase the claimant (henceforth: the appellee) had not lost the property because of the war. Therefore, in his opinion, the case is not in the jurisdiction of the KPCC/KPA Appeals Panel but had to be handled by the regular courts. This is demonstrated, so the appellant's statement, by the fact that the appellee filed a claim with the Municipal Court of Pejë/Peć.

The appeal was served on the claimant (henceforth: the appellee) on 15 August 2012. The appellee responded on 24 August 2012 by mainly repeating his former statements.

### **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.

The case falls in the scope of jurisdiction of KPCC and KPA Appeals Panel. The case is directly related to the armed conflict in Kosovo. The Court notes that in 2005 the appellee had been lodged in the Collective Center "Dom ucenika" in Kolašin, a collective center for refugees, also the Certificate issued by the Security Center of Berane in 2001 mentions that his son B. was a "displaced person from KIM". The Court deems a case directly related to the armed conflict if – as the situation is here – the property right holder respectively his family had to leave their property as refugees because of the armed conflict and if in close temporal context the situation is exploited and the parcel usurped (whether just by factual occupation or by allegedly selling/buying it). That the appellee has filed a claim with the Municipal Court of Pejë/Peć does not influence

the question of jurisdiction. The Court's scope of jurisdiction is not to be decided upon by any party filing a claim with another court. Besides, the appellee with this claim requests the sales contract between the appellant and V. (M.) M. to be invalidated. This indeed is a subject matter not included in the claim this Court has to decide upon.

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. As the appellee's father had been the owner of the parcel since at latest 1968, the ownership of the parcel could not be transferred by M. M. V. in 2000.

The appellee has proven his ownership of the parcel by providing the KPCC with vided the KPCC with Decision P.br. 13/68 of the Municipal Court of Pejë/Peć, issued on 3 April 1968. With this decision the Court decided in the proceedings of V.(V.) Š. – the father of the appellee - vs. M. (M.) V. based on acceptance that V. (V.) Š. was the owner of parcel no. 262/2 with a surface of 5 ar 70 m<sup>2</sup> and the residential building situated on that parcel; as the parties waived their right to appeal the decision became final on 3 April 1968. At latest with this decision the appellee's father had become owner of the litigious parcel. At this time, a registration was not necessary for the transfer of ownership.

The appellant conceded that the appellee's father and his family had bought the parcel and lived on the property. The receipt allegedly signed by B. S. reads as follows: "This amount on behalf of the genuine owner V. (M.) M. is received by S. B. from Pec, with temporary residence address in Serbia, who has with the consent of the formal owner, received the above mentioned amount, considering ***he is the only owner with legal and formal perspective since he bought and lived on the subject immovable property***" (accentuation by the Court).

Therefore in 2000, as M.V. did not have rights over the claimed property, he could not transfer such rights to the respondent. With the alleged purchase contract, concluded between the appellant and M.V., allegedly represented by R. (R.) R., the rights to the property therefore could not be transferred.

Even if the son of the appellee received part of the purchase price, this would not change the legal assessment. The court finds no indication that B. Š. had any power to transfer any property rights. Receiving (part of) the purchase price does not give such rights.

According to all this, the appellee has proven his father's rights to the litigious property.

Hence it is not necessary for the Court to assess the power of attorney allegedly given by M. V.(which combines a square stamp of Cacanik with a round seal of Beograd). Also the alleged contract between the appellant and M. V. can – as explained above – not influence the decision.

### **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 comprised at € 42.500: € 262,50 (€ 50 + 0,5% of € 42.500).

These court fees are to be borne by the appellant who loses the case. According to Article 45 Paragraph 1 of the Law on Court Fees, the deadline for fees' payment is 15 days. Article 47 Paragraph 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*