

**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-128/12

**Prishtinë/Priština,
19 February 2013**

In the proceedings of

T. GJ.
R. B. 56A
F./U.

Respondent/Appellant

vs

P. B.
D./D. D.
K./K.

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/R/150/2012 (case file registered at the KPA under the number KPA01118), dated 19 April 2012, after deliberation held on 19 February 2013, issues the following

JUDGMENT

- 1- The decision of the Kosovo Property Claims Commission KPCC/D/R/150/2012, dated 19 April 2012, as far as it regards the case registered under No. KPA01118, *ex officio* is annulled and the claim is dismissed as it does not fall within the scope of jurisdiction of the KPCC.
- 2- Costs of the proceedings determined in the amount of € 60 (sixty) are to be borne by the appellee 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 7 September 2007, P. B. filed a claim with the Kosovo Property Agency (KPA), seeking repossession of a property located in Ferizaj/Uroševač, Rexhep Bislimi 52, parcel No. 1131/2, a house with a surface of 1 ar 69 m² and a garden with a surface of 4 ar 34 m² (in total 6 ar 03 m²). He stated that the occupant was T. Gj. and requested repossession as well as compensation for the usage of his property and the damages done especially for the destruction of the bakery.

He submitted – amongst others – Possession List No. 1222 for Cadastral Zone Ferizaj/Uroševač which showed that the litigious property was registered under the name of P. (M.) B.. The Possession List could be verified by the KPA.

T. Gj. responded to the claim, stating that in 1981 he had bought half of the property. The other half had been bought by the claimant. He provided the KPA with an uncertified sales contract of 12 October 2005 according to which the claimant had sold his part of the property to him for 30.000 €.

P. B. replied, stating the following: *“I hereby inform you that this is my legitimate property. However, the same property I have given for rent to T. Gj., who has occupied it after the war and at the same time has demolished the bakery which was part of the said immovable property. I have requested him to vacate my property but he did not. Because he did not vacate it I was obliged to initiate court proceedings so that the competent bodies will evict him. T. Gj. has agreed to pay the rent, and for some time he paid it, but recently he did not pay the rent”*. He submitted a request directed by him at the Municipal Court of Ferizaj/Uroševač on 12 May 2005. In this request

the claimant states the following: “For a long time the claimant has been working temporarily in Germany and while his stay there and later he enabled the respondent, his brother-in-law T. Gj. to live in this house together with his family and to vacate it as per agreement”.

With its decision KPCC/D/R/150/2012 of 19 April 2012 the KPCC granted the claim for confirmation of ownership rights and repossession. It dismissed, however, the claim for compensation as the Commission had no jurisdiction over such claims.

The decision was served on the respondent on 1 October 2012.

On 8 October 2012, the respondent (from here on: the appellant) filed an appeal with the Supreme Court. He challenged the decision for erroneous and incomplete determination of facts. The appellant repeated his statements before the KPCC. Furthermore, he informed the Court that he had initiated proceedings before the Municipal Court of Ferizaj/Uroševač to impose temporary measures against his brother-in-law [from here on: the appellee]. According to the statements in this request, the appellant has the ownership right over ½ of the property which is in his possession since 1982. The appellee had the property registered in his name without the appellant knowing. Currently, the appellee tries to sell the property, including the part of the appellant.

The appellant did not reply to the appeal.

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 appeal also is successful as the claim could not be granted. The case is not within the scope of jurisdiction of the KPCC (Section 11.4 (a) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079), the appealed decision therefore *ex officio* had to be annulled and the claim instead of being granted had to be dismissed.

Although the KPCC as a quasi-judicial body by deciding on the merits of the claim already has accepted its jurisdiction, the Court *ex officio* assesses whether the cases fall within the scope of its jurisdiction (Art. 195.1 b) of the Law on Contested Procedure).

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 a right to the 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 this case, however, there is no evidence nor any indications that the loss of the property is in any connection with the armed conflict of 1998/1999. On the opposite, the appellee himself stated that he gave the property to his brother-in-law to live in for some time. That the appellant just stays on the property and now declares the property to be his own is in no respect related to the armed conflict in 1998/1999.

Cases like these are not within the scope of jurisdiction of the KPCC or the KPA Appeals Panel, they have to be adjudicated by the competent general civil courts.

Therefore the decision of the KPCC regarding the claim *ex officio* had to be annulled and the claim dismissed as being without the jurisdiction of the KPCC and the Court.

The Courts decision is without prejudice to the right of the appellee to seek confirmation of his property right before the competent local authorities.

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, 10.15 and 10.1 of AD 2008/2) considering that the value of the property at hand could be reasonably estimated as being above € 20.000: € 30.

These court fees are to be borne by the appellee 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