

**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-105/12

**Prishtinë/Priština,
5 March 2013**

In the proceedings of:

Sa. H.

C./C.

G./G.

Appellant

vs.

S. P.S.

D. .

M.

S.

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/133/2011 (case file registered at the KPA under No. KPA34467), dated 7 December 2011, after deliberation held on 5 March 2013, issues the following

JUDGMENT

- 1- The decision of the Kosovo Property Claims Commission KPCC/D/A/13/2011 of 7 December 2011, as far as it regards the case registered at the KPA under No. KPA34467, is annulled and the claim is dismissed as the case is not within the scope of jurisdiction of the KPCC.

- 2- The appellee has to pay the costs of the proceedings which are determined in the amount of € 45 (forty-five) within 90 (ninety) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 15 November 2007, S. P.S. filed a claim with the Kosovo Property Agency (KPA), seeking confirmation of his property right and repossession of a property situated in Cernicë/Cernica, Gjilan/Gnjilane, parcel No. 2682, a 5th class field with a surface of 10 ar and 2 m². He explained that his late father P. K. S. had been the owner of this parcel and that it had been lost on 19 June 1999 as a result of the circumstances 1998/1999 in Kosovo. The case was registered with the KPA under No. KPA34467.

The claimant provided the KPA with Possession List No. 132 of 22 April 1984 which showed that the litigious parcel was registered under the name of P. K. S..

The KPA found the Certificate for the Immovable Property Rights (UL-70403062-00132) according to which the parcel was registered under the name of S. P. S., the claimant.

In 2008 the KPA notified of the claim by putting a sign on the place where the parcel allegedly was situated. In 2010, the KPA again notified of the claim, this time by announcing the claim in the Notification Gazette

No. 6 and the UNHCR property office Bulletin. The Gazette and the List were left with a shop owner in Cernicë/Cernica who accepted to make it available for interested parties. The publications also were left at the entrance and exit of Cernicë/Cernica as well as in several official offices in Gjilan/Gnjilane.

As nobody responded, the claim was treated as uncontested and the KPCC with its decision KPCC/D/A/133/2011 of 7 December 2011 granted the claim, deciding that the claimant, S. P. S. had proven that S. P. S. was the owner of the parcel and entitled to possess it.

On 16 August 2012, S. H.(from here on: the appellant) filed an appeal, stating that he had bought the parcel on 17 June 2003 from S. P.S.. He provided the KPA with a corresponding written contract.

The appeal was served on the claimant (from here on: the appellee) on 19 November 2011.

On 27 December 2011, the appellee requested the KPA to close claim KPA34467. He signed a form provided by the UNHCR which reads as follows:

“Request to close the decided KPA claim KPA34467

I, Claimant S. S.

Hereby confirm the request to close of submitted KPA claim for the abovementioned property. I understand that KPA will close this case in regard to the abovementioned property without any further action. By signing this form, the Claimant or the Authorized person has permanently waived any and all requests addressed to KPA. I have attached a copy of my ID-card (and a written authorization of the claimant if applicable).

Claimant or representative has the following reason to close the case:

The property has been sold or given to a third person.”

Legal reasoning:

The appeal is admissible although the appellant has not been a party in the proceedings before the KPCC. This circumstance cannot go to the detriment of the appellant as indeed he had not been correctly notified of the claim. The notification was done by publication of the claim in the Notification Gazette of the KPA and the UNHCR Bulletin. This, however, constitutes “reasonable efforts” to notify of the claim as required by section 10.1 of the regulation only in exceptional cases. Such an exception cannot be found in this case. As the Court cannot exclude that the appellant was not aware of the claim, he has to be accepted as a party to the proceedings, his appeal is admissible.

The claimant in his request to close the decided KPA Claim declared to waive permanently any and all requests addressed to the KPA. This statement has to be considered as a withdrawal of the claim (Art. 149 of the Law on Contested Procedure) which is possible not only before the KPCC but also in the proceedings before the KPA Appeals Panel (Art.193 and 227 of the Law on Contested Procedure).

After a withdrawal of the claim, the court without conducting any further proceedings will render a judgment rejecting the claim which the claimant has withdrawn. This, however, has as precondition the general rule that the case is within the jurisdiction of the court. Yet the case here is not in the scope of jurisdiction of the KPCC/KPA Appeals Panel.

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 case falls within the scope of its jurisdiction (Art. 195.1 b) of the Law on Contested Procedure).

Therefore the decision of the KPCC insofar as it has been appealed had to be annulled and the claim dismissed (Section 11.4 (a) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079), not rejected.

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, the appellee admits that the parcel had been “sold or given to a third person”.

Therefore, the loss of the property is not related to the armed conflict of 1998/1999 in Kosovo.

As a consequence the decision of the KPCC regarding the claim had to be annulled and the claim dismissed as being without the jurisdiction of the KPCC and the Court.

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, as the value of the litigious parcel can be estimated at less than € 1.000 (10.21, 10.15 and 10.1 of AD 2008/2): € 15.

These court fees are to be borne by the appellee who filed an inadmissible claim. According to Article 46 of the Law on Court Fees, when a person with residence or domicile abroad is obliged to pay a fee, the deadline for the payment may not be less than 30 days and no longer than 90 days. The Court decides that the deadline here is 90 (ninety) 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

Sylejman Nuredini, Judge

Elka Filcheva-Ermenkova, EULEX Judge

Urs Nufer, EULEX Registrar