

**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-35/13

**Prishtinë/Priština,
17 July 2013**

In the proceedings of

N. N.

Kosovo
Represented by lawyer
Xh.M.

Kosovo

Claimant/Appellant

vs.

M. L.

Prishtinë/Priština

Respondent/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Elka Filcheva-Ermenkova, Presiding Judge, Esma Erterzi and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/149/2012 (case file registered at the KPA under No. KPA00078) of 19 April 2012, after deliberation held on 17 July 2013, issues the following

JUDGMENT

- 1- The appeal of N. N. against the decision of the Kosovo Property Claims Commission KPCC/D/A/149/2012 of 19 April 2012 as far as it regards the claim registered at the KPA under No. KPA00078 is rejected as unfounded.
- 2- The decision of the Kosovo Property Claims Commission KPCC/D/A/149/2012 of 19 April 2012 as far as it regards the claim registered at the KPA under No. KPA00078 is confirmed.
- 3- The appellant has to pay the costs of the proceedings which are determined in the amount of € 60 (sixty) within 15 (fifteen) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 22 November 2006, N. N. filed a claim with the Kosovo Property Agency (KPA), seeking repossession. The claimed parcel was parcel No. 1287, located in the municipality of Glllogoc/Glogovac in Komoran/Komorane, cadastral zone Komoran/Komorane with a surface of 3 ha, 12ar and 8m². The claim was registered at the KPA under no. KPA00078.

The claimant submitted a copy of a lawsuit P. 697/61 from the Municipal Court in Prishtinë/Priština, dated 31 August 1961, in which his father seeks possession and ownership rights over the claimed property and a decision 03/8967, dated 6 July 1964 from the Autonomous Province of Kosovo and Metohija, Provincial Secretariat of Finance that no valid documents would present him as owner of the property. Further the assumption was made that all forests are socially owned, unless ownership was proven by written documents.

On 06 March 2007 in a statement to the Kosovo Trust Agency, N.N. said that in 1928, his land located at the place called Ostrog with field and meadow was taken by the Agricultural Cooperative “DRENICA BOAL – Agroprodukt” in Glllogoc.

In a statement from 31 May 2011 N. N. stated that the parcel No. 1287 is being used by him for 52 years.

On 19 April 2011 the KPA Executive Secretariat located ex officio possession list No. 190 with the parcel No. 1287, listing the claimed property as socially owned property.

With its decision KPCC/D/A/149/2012 of 19 April 2012, the KPCC dismissed the claim as the loss of possession of the parcel was not related to the armed conflict in Kosovo in 1998/1999.

The KPCC's decision was served on the claimant on 13 December 2012.

On 11 January 2013, the claimant (from here on: the appellant) through the Executive Secretariat of the KPA filed an appeal with the Supreme Court of Kosovo, regarding case file No. KPA00078. He stated erroneous and incomplete determination of factual state and erroneous application of material right.

On 14 March 2013 the appeal was served to the respondent (from here on: the appellee). The appellee responded on 18 April 2013 and states that the claim of the claimant/appellant was dismissed with a full right by the KPCC.

Legal Reasoning

The appeal has been filed within the deadline of 30 days prescribed by the law (Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079). Yet it is not grounded.

The Supreme Court finds neither erroneous establishment of facts nor misapplication of the procedural or material law. The KPCC correctly assessed that the claim does not fall within the scope of its jurisdiction.

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.

Obviously there have been disputes about the property between the appellant and the appellee since the 1960s. Starting with lawsuit P. 697/61 from the Municipal Court in Prishtinë/Priština, dated 31 August 1961, in which his father seeks possession and ownership rights over the claimed property and a decision 03/8967, dated 6 July 1964 from the Autonomous Province of Kosovo and Metohija, Provincial Secretariat of Finance that no valid documents would present him as owner of the property. In a statement from 06 March 2007 to the Kosovo Trust Agency, the appellant said that in 1928, his land located at the place called Ostrog with field and meadow was taken by the Agricultural Cooperative, “DRENICA BOAL – Agroprodukt” in Glogovc.

The dispute concerning the property in question and the loss of the property is not connected to the armed conflict of 1998/1999. The appellant mentions a certificate on real estate right no. 7030140351287 lost due to the conflict. It might be that the appellant lost this certificate due to the conflict, but the appellant admits in his appeal that since the 1960s he had disputes before the competent courts and possession disturbances regarding the claimed parcel and statements attached to the appeal show that there were disputes over the claimed property already in the 1920s. In the statements is also said that the appellants family is using the claimed property also nowadays.

Therefore the Court finds that the case is not within the scope of its jurisdiction pursuant to Section 3.1 of UNMIK Regulation 2006/50 as amended by Law no. 03/L-079. According to this provision, the Supreme Court has jurisdiction in case the property rights cannot be exercised due to circumstances directly linked or resulting from the armed conflict that occurred within the period from 27 February 1998 until 20 June 1999. In the case at hand, the subject matter of the claim is obviously related to old conflicts between the appellant and the appellee which existed before the armed conflict of 1998/1999.

Based on the above considerations and in accordance with section 13.3 (c) UNMIK/REG/2006/50 as amended by Law No. 03/L-079, the appeal has to be rejected and the decision of the KPCC as far as it regards the litigious property confirmed.

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 request on which the Court decided could be reasonably estimated to be over € 15000 (€ 50 + 0.5% of 15000, but not more than € 30).

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 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.

Elka Filcheva-Ermenkova, EULEX Presiding Judge

Esma Erterzi, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar