

**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-057/2013**

**Prishtinë/Priština,  
21 October 2013**

In the proceedings of:

**I.U**

*Appellant/Respondent*

vs.

**B.M**

*Claimant/Appellee*

The KPA Appeals Panel of the Supreme Court of Kosovo (hereafter: the Appeals panel) composed of Elka Filcheva-Ermenkova, EULEX Presiding Judge, Willem Brouwer and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/127/2011(case file registered at the KPA under No. KPA15129), dated 26 October 2011, after deliberation held on 21 October 2013, issues the following

**JUDGMENT:**

- 1. The appeal is rejected as ungrounded;**

2. The decision by the Property Claims Commission KPCC/D/A/127/2011, dated 26 October 2011, as far as it relates to the case registered under the number KPA15129 is confirmed;
3. Costs of the proceedings determined in the amount of € 130 (one hundred and thirty euros) are to be borne by the I.U 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.

1. **Procedural background:**

- 1.1. On 5 September 2006, the Appellee filed a claim at the Kosovo Property Agency (KPA), seeking confirmation of her property right over 1/15 of cadastral parcel 885, surface of which is 0 90 07 ha (hereafter: the parcel) according to the possession list 171 of the cadastre of the Municipality of Babimoc/Babin Most.
- 1.2. The KPCC found the claim grounded and confirmed the Appellee in her property right.
- 1.3. The parcel is in use by I.U.
- 1.4. The decision was submitted to I.U on 11 February 2013.
- 1.5. I.U filed an appeal against the KPCC decision at the KPA on 11 February 2013
- 1.6. A (translated) version of the appeal was submitted to B.M, whom did not file any response.

2. **Factual background**

The Supreme Court takes as facts the following, as established by the KPCC and not contested by parties or otherwise proven wrong:

- 2.1. By an inheritance decision by the Municipal Court in Pristine, dated 14 February 1996 no 14/96, the estate of the deceased M.M was established. M.M is the late husband of B.M.
- 2.2. In the above mentioned inheritance decision it was established that the estate included the property right of 1/5 of the parcel. And furthermore that B.M was to inherit 2/3 of this share of the parcel while her son, N.M, would inherit 1/3 of the share of the parcel, which made M.M the owner of 2/15, and her son for 1/15 co-owner of the parcel.

2.3. The inheritance decision refers to the Partial possession list of the cadastral zone Babimoc, no: 72602001, in which 2/15 of the parcel is ascribed to B.M. Besides B.M and her son, the following persons were mentioned in the list as co-owners of the parcel: A.M, D.M, M.M2, and M.M3.

2.4. I.U seeks the confirmation of his ownership right over the property since the possession and use of the property have been adjudged to B.M.

### **3. Legal reasoning:**

#### *Jurisdiction*

3.1. According to section 3.1 of UNMIK/REG/ 2006/50 on the resolution of claims relating to private immovable property, including agricultural and commercial property, the Kosovo Property Agency has the competence to receive and register and, through the Property Claims Commission, has the competence to resolve, subject to the right of appeal to the Supreme Court of Kosovo, ownership claims with respect to private immovable property, including agricultural and commercial property and claims involving property use rights in respect of private immovable property, including agricultural and commercial property the following categories of conflict-related claims involving circumstances directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999.

3.2. In her claim B.M has stated that she had to abandon the parcel due to the circumstances directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999. B.M statement was not contested in first instance nor in appeal and the file gives no clue whatsoever that this statement would be false. The Court therefore finds that the case is within the jurisdiction of the Court.

#### *Admissibility*

3.3. The decision was submitted to I.U on 11 February 2013. I.U filed an appeal against the KPCC decision at the KPA on 11 February 2013, which is within the period of 30 days mentioned in section 12.1 of the UNMIK Regulation 2006/50, as amended by Law No. 03/L-079 on Resolution of Claims Relating to Immovable Property, Including Agricultural and Commercial Property.

3.4. I.U is therefore admissible in his appeal.

## *Merits*

3.5. In his appeal I.U contests the decision of the KPCC on the rightful ownership of B.M of the parcel. Since I.U states that he is the rightful owner of the parcel, he will have to proof this statement. I.U states that he bought the parcel 29 years ago from B.M husband, M.M, and that the latter and B.M received a payment.

3.6. As evidence I.U has filed an geodesy expert's report (hereafter: the geodesy-report) dated 8 March.2010 by A.A, geodesy expert assigned by the Municipal Court of Pristina (ruling: C.no.425/09). The geodesy-report was apparently initiated by B.M2 and counter-initiated by D.M and M.M2 from B. Most. This geodesy-report was, according to the contence of it, meant to determine a part of cadastral number 885 as the property of B.M.

3.7. The geodesy-report mentions the following:

*(...)“the cadastral parcel no. 885, the plan and the sketch 5/13 at the place called “between the roadsstreets” with a culturefield 2<sup>nd</sup> class with a surface  $S=0.90.07ha$ , private property according to the certificate of the right of immovable property no 171 is recorded in co-ownership and that 3/16 M.A; 2/5 M.B (P.); 3/15 M.D; 3/15 M.M2; 3/15 M.M3 and 1/15 M.N (M.) from P. (...)The real estate (...) as a part fo parcel 885 (...) that petitioner had in use was bordered by these owners(...).*

3.8. The quoted geodesy-report under 3.7 cannot be considered a proof that I.U has the right of property over the parcel. It merely establishes the property of B.M2 by pointing out its bordering. And the parcel is described as a part of the bordering of B.M2 property. In fact the geodesy-report acknowledges that 2/15 of the parcel is owned by B.M.

3.9. Furthermore, when I.U part of parcel 885 is mentioned the geodesy-report says: *“on east from the point 7 until the point 27 with 25.94 length is bordered with parts of the cadastral parcel no.885 which is in use of I.U” (...)* Whereas the other part of the cadastral parcel no.885 (...) in the surface of  $S=0.60.07ha$  which I.U had in use is bordered with these owners and the cadastral parcels according to the cadastral and the factual situation is as follows (...).“

3.10. This quotation mentions that part of the parcel that is used by I.U, is bordered by the part mentioned under 3.7. In fact it acknowledges that the parcel is owned by B.M and the others of the M. family.

3.11. Therefore the court concludes that the geodesy-report as such gives no proof whatsoever that I.U is the rightful owner of the 2/15 part of parcel 885 in question.

3.12. As further evidence I.U has filed a statement of M.M2, brother of M., stating that I.U had bought parcel 855 30 years ago.

3.13. The Court deems this sole statement as not sufficient to proof that I.U has purchased the parcel. The Court takes in consideration that the statement is not supported by any written proof. There is no contract, nor is there some registration in a public register which gives proof of such a purchase. I.U admittedly states that B.M is not telling the truth and that there must be a contract on the alleged purchase but he has not produced such a document, nor has he given any other evidence on his allegations towards appellee.

3.14. The above mentioned facts and legal reasoning lead the Court to the conclusion that I.U has not given sufficient proof of his statement. His appeal is therefore ungrounded and the decision made by the KPCC is confirmed.

#### **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 exempt from the costs of the 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 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 (Sections 10.21, 10.12 and 10.1 of AD 2008/2), considering that the value of the claimed property use right might be estimated at € 10.000 (Article 30 subparagraph 2 of the Law on Court Fees): € 100 (€ 50 + 0,5% of

€ 10.000 to a maximum of € 500)

These court fees of € 130 are to be borne by the I.U who loses the case.

According to Article 45.1 of the Law on Court Fees, the deadline for fees payment is 15 days. Article 47.3 provides that in case the party fails to pay the fee within the deadline of 15 days, 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 the 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**

**Willem Brouwer, EULEX Judge**

**Sylejman Nuredini, Judge**

**Urs Nufer, EULEX Registrar**