

**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-108/12

Prishtinë/Priština, 19 February 2013

In the proceedings of:

D. A. (A.) B.

Zrenjanin
Srbija

Claimant/Appellant

vs.

I. M.

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Prishtinë/Priština

Respondent/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/145/2012 of 29 February 2012 (case file registered at the KPA under No. KPA56665) after deliberation held on 19 February 2013, issues the following

JUDGMENT

- 1- The appeal of Đ. B. against the decision of the Kosovo Property Claims Commission KPCC/D/R/145/2012 of 29 February 2012 is rejected as ungrounded.
- 2- The decision of the Kosovo Property Claims Commission KPCC/D/R/145/2012 of 29 February 2012 as far as it regards the case registered at the KPA under No. KPA56665 is confirmed.
- 3- The appellant has to pay the costs of the proceedings which are determined in the amount of € 155 (one hundred fifty-five) within 90 (ninety) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 3 December 2007, Đ. B. filed a claim with the Kosovo Property Agency (KPA), seeking repossession of a property situated in Prishtinë/Priština, Backa (address ...) 14, parcel No. 2190/1, a yard with two buildings with a total surface of 2 ar and 14 m². He explained that his father, A. (A.) B. is the owner of the houses and the parcel which he gained by building the houses. The old house of 56 m² was destroyed and the newer house of 360 m² was partly destroyed but illegally occupied by an unknown Albanian person who finished the building. He could not provide all documents as they had remained in Kosovo. The claim was registered in the KPA under the number KPA56665.

The claimant provided the KPA with the following documents:

- Possession List No. 1889 for the Municipality of Prishtinë/Priština, issued on 12 February 2002, showing that the litigious parcel (yard with one house with a surface of 56 m²) was registered under the name of B. (M.) A. Pristina address ...;
- Copy of a plan of the parcel, issued on 5 April 2002;

- Extract from the Marriage Register (Nr. 655/46 for 1984), issued on 8 February 2000 by the Federal Republic of Serbia for the Municipality of Prishtinë/Priština, showing that Đ. B., born on 3 January 1939, father A. B., with residence in Prishtinë/Priština, had married on 7 October 1984.

The KPA found a Certificate for the Immovable Property Rights of 5 July 2008, showing that B. A. (M.) was the owner of the litigious parcel. The KPA also could verify the Marriage Certificate No. 655/46 for 1984.

Later on in the proceedings (on 16 August 2011) he also provided the KPA with a Death Certificate issued by the Republic of Serbia (Municipality Zrenjanin), showing that A. B., born on 18 August 1939, father M. B., had died on 16 January 2009 in Zrenjanin. He also submitted a copy of a passport, issued on 21 February 2000 for A. B., father's name M., born 18 August 1939, address Prishtinë/Priština address ... (ID-No. ...) as well as a decision of the Secretariat for Communal and Housing Services of the Municipal Assembly of Prishtinë/Priština, dated 22 September 1998 with which for the housing of A. (M.) B. the number 22/2 in Backa [note of the Court: address ...] was given. He submitted several pictures of a destroyed house and requested the KPA check with the Cadastre and Courts to return his property to him.

During the notification of the claim in 2008, the property was found occupied by I. M. who declared that he had bought the property from A. B.

He submitted the following documents:

- Sales contract of 2 September 2005, prepared by Agjencion për Shërbime "...", owner H. S., by which A. (M.) B. sold the litigious parcel to I. M. for € 9.900; witnesses were N. M. and N. B.; the contract was certified in the Municipal Court of Prishtinë/Priština on 5 September 2005 - VR.nr. 6970/2005;
- Same sales contract, same date, about the same parcel, signed by the same parties and witnesses, prepared by the same agency, Not certified, purchase price this time € 15.000;
- Bank receipt, showing that on 5 September 2009 I. M. took € 15.000 in cash from his bank account;
- Decision of the Directorate for Finance, Economy and Development of Prishtinë/Priština, Number 010-413/2652-21861, dated 22 August 2008, with which the tax for the purchase of the parcel was derived from a purchase price of € 9.900;
- Copy of an ID-Card, issued on 20 February 1998 for A. B., Name of the father: M., date of birth 18 August 1939, place Prishtinë/Priština, Ul., ID-No. ;

- Note of Verification – Nr. 435/19547 – dated 1 September 2005, issued by the Directorate of Finances of Prishtinë/Priština, showing that A. M. B., rr. ... , had no obligations for 2002-2005;
- UNMIK-Possession List 1889 of 22 June 2005, showing that the litigious parcel was registered under the name of B. A. (M.);

The KPA found a Certificate for the immovable property rights of 1 June 2009 – UL-71914059-01889, showing that M. I. (H.) was the owner of the litigious parcel. With the register they also found the purchase contract with a purchase price of € 9.900.

According to several notes in the files, the KPA officers tried to reach the claimant for more information. They reached the claimant's brother, A. B., who told them that they did not sell the property but that the documents were forged. In another call, he also told the KPA officer that he had initiated proceedings before the Municipal Court in Prishtinë/Priština in 2009, that they would decide this dispute and that the KPA officer should never call again. After this he ended the call. The claimant confirmed that they had initiated proceedings before the Municipal Court and added "the court will decide this dispute, not you". He refused to give more information.

With its decision KPCC/D/R/145/2012 of 29 February 2012 the KPCC refused the claim, stating that the claimant had failed to provide any evidence in support of his allegation that the evidence provided by the respondent was falsified. The KPCC noted that the claimant had not been willing to cooperate with the Executive Secretariat.

The decision was served on the claimant on 19 July 2012.

On 9 August 2012, Đ. B. [from here on: the appellant] filed an appeal with the Supreme Court. He now stated that I. M. had been deceived by the seller who had taken advantage of the similarity of his name with this of the real property rights holder. He stated that his father, the property rights holder, was called B. M. A. (from address ...), whereas the impostor's name was B. M. A. (from address ...).

I. M. [from here on: the appellee] did not reply to the appeal.

Legal reasoning:

The appeal is admissible as it has been filed within the deadline of 30 days prescribed by Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079.

The case is within the jurisdiction of the KPA as, if the statements of the appellee regarding the property rights could be proven, the property would have been lost because of the armed conflict in Kosovo during 1998/1999 (Section 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079).

The appellant, however, could not prove that his father was the property right holder.

The property was registered under the name of “B. M. A., Pristina address ...”. This name and address is given by Possession List 1889 of 12 February 2002 submitted by the appellant, UNMIK-Possession List of 22 June 2005 and the Certificate for the Immovable Property Rights – UL-71914059-01889 – of 5 July 2008.

The Court has been provided with copies of two ID-Cards, one for “A. M. B.”, born on 18 August 1963, living in address ..., ID-No. ... – the appellant’s father, as according to the appellant’s Marriage Certificate the appellant’s father was born on the same day, and one for “A. M. B.”, born on 15 March 1963, address ... , ID-No. ..., the ID-card used by the person who sold the parcel to the appellant.

Both ID-cards have been verified super facie by the KPA. The Court does not arrive at another conclusion.

The appellant has not given any evidence or other indication to sustain his prior allegation that the ID-card provided by the appellee has been forged. Even more, with his appeal the appellant no longer sustains this allegation but now tries to explain that the seller took advantage of the similarity of names and address and tries to point to a difference of the names of the father of the ID card holder (M. for the appellant’s father, M. for the seller) which – in his opinion – reveals that the appellant’s father was the property right holder.

The Court, however, does not find this reasoning convincing. Mainly, the property is registered under the name of “A. M. B.”. This means that the name of the seller is more similar to this name than the name of the appellant’s father is. Secondly, these differences of names cannot be considered of much importance. The Court notes that the parcel is registered under the name of “A. M. B.”. None of the persons involved here is registered in the ID-card as “A.”, both are called “A.”. [The Court wants to note that this is an indication that at least the ID-card of the seller was not forged according to the name registered in the Possession List, otherwise the name of “A.” would have been used.]

The ID-cards, therefore, do not prove that the appellant’s father was the owner of the litigious property.

The KPCC also found that the appellant had received a decision of the Housing and Property Claims Commission in his favour (HPCC/D/177/2005/C of 30 April 2005). This decision, however, also gives no

proof that the property belonged to the appellant's father. No respondent took part in the proceedings so that the decision not only does not provide *res indicata* for the proceedings here but also did not consider all the facts to be considered in the case before this Court.

The pictures of a destroyed house which were submitted by the appellant do not prove ownership of the litigious parcel. The same goes for the Decision of the Secretariat and Housing Services of the Municipal Assembly of Prishtinë/Priština of 22 September 1998. With this decision a certain number in address ... street is given to the housing place of A. (M.) B. The Court notes, however, that this number (22/2) does not correspond with the housing number of the litigious parcel (14). Therefore, this document does not prove, not even is an indication for, the ownership of address ..., the litigious parcel.

As none of the parties presented witnesses the Court has no other evidence upon which to base its judgment. As the submitted evidence does not prove the ownership of either of the parties, the Court has to issue a decision based on the principles of the burden of proof. In general, the burden of proof lies with the party who claims a right. This principle has to be applied to this case as the Court finds no situation that would hold other rules for the burden of proof applicable. As therefore the appellant had to prove the claimed property right and did not succeed in doing so, his claim had to be refused and his appeal accordingly be rejected as ungrounded.

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) as the value of the parcel can be estimated as being € 15.000: € 125 (50 + 0,5 %).

These court fees are to be borne by the appellant who loses the case. According to Article 46 of the Law on Court Fees, when a person with residence abroad is obliged to pay a fee, the deadline for fees' payment is not less than 30 (thirty) and no longer than 90 (ninety) days. The Court sets the deadline to 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

Elka Filcheva-Ermenkova, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar