

**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-46/11

**Prishtinë/Priština
14 June 2011**

In the proceedings of

Z.A.

Claimant/Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Antoinette Lepeltier-Durel, Presiding Judge, Anne Kerber and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/84/2010, (case file registered at the KPA under the number KPA51242), dated 2 September 2010, after deliberation held on 14 June 2011, issues the following

JUDGMENT

- 1- The appeal of Z.A. is rejected as ungrounded.

- 2- The decision of the Kosovo Property Claims Commission KPCC/D/A/84/2010, dated 2 September 2010, as far as it regards the case registered under No. KPA51242, is confirmed.

- 3- The appellant has to pay the costs of the proceedings which are determined in the amount of € 55 (€ fifty-five) within 90 (ninety) days from the day the judgment is delivered or otherwise through compulsory execution.**

Procedural and factual background:

On 13 November 2007 the claimant Z.A. submitted to the Kosovo Property Agency (KPA) his ownership claim in relation to a property located at a place called Krçevina – Kod Kuqe in Rahovec/Orahovac, cadastral zone Gexhë/Gedza, parcel No. 82, a third class field with a surface of 1024 m². The claim was registered as KPA51242.

The claimant stated that he was the owner of this property, that the loss of the possession was a result of the circumstances in 98/99 in Kosovo and that the date of the loss was 19 June 1999. He did not know what happened to the property. Furthermore he stated that an inheritance procedure had not been conducted. He wanted repossession of the property.

To support his claim the claimant provided the KPA with the following documents:

- possession list No. 39, issued on 16 October 2007, of the Immovable Property Cadastral Office of Rahovec/Orahovac, stating that parcel No. 82 was in the possession of J.A.;
- a document signed by J.A., “*widow of the late I. A.*” on 28 July 1970, giving her stepson “*A.I.Z.*” power of attorney regarding the property registered in the possession list No. 44 of the cadastral Municipality of Rahovec/Orahovac, Gedza. The document was certified by the Municipal Court in Titograd.

The possession list and the power of attorney could be verified by KPA officers. As the possession list indicated that not the claimant, but J.A. was the owner of the parcel, KPA officers contacted the claimant and asked for an explanation. The claimant informed them, that J.A. was his step-mother and had died. Later on, he informed the KPA that J.A. had not had any children and that the claimant himself was the only child of his father, so that nobody could confirm the family relationship.

Being asked to prove the family relationship, the claimant provided the KPA with a death certificate, allegedly that of his stepmother (the property right holder). The death certificate showed that “*J.B.*”,

born 22 March 1922 and citizen of the Republic of Montenegro, died on 31 December 2006 in Goricani, Montenegro, and that the name of the spouse was I.B.. The document could be verified. On question of the KPA, the claimant explained that I.B. had been the first husband of his stepmother.

On 5 and 29 May 2009 the claimant was asked to provide his marriage certificate within a deadline of 30 days. The claimant agreed but failed to do so.

On 10 July 2009 the claimant was asked to provide his birth certificate within a deadline of 30 days. The claimant agreed, but failed to submit the document.

On 18 August 2010 the claimant was asked to provide his father's marriage certificate (since his birth certificate and his stepmother's marriage certificate had already been requested) and therewith to prove that the alleged property right holder had been his stepmother. The claimant stated that he did not possess this document.

On 2 September 2010 the KPCC dismissed the claim for lack of proof of the claimant's capacity to file a claim on behalf of the property right holder and for lack of proof of the claimant being the owner of the property (KPCC/D/A/84/2010).

The decision was served on the claimant on 25 February 2011.

On 28 March 2011 the claimant (hereafter: the appellant) filed an appeal with the Supreme Court. He stated that he was the heir of "J.A.B.", as his late father I. had been married to her. Furthermore he had general power of attorney concerning all the immovable property which gave him the unlimited right to dispose of the property. To sustain his appeal the appellant submitted to the Court not only the possession list 39, the power of attorney of 1970 and the death certificate of J.B. but also a possession list No. 243 of the Cadastral Office of Rahovec/Orahovac (possibly related to other claims of the appellant) and his marriage certificate issued on 25. May 2009 by the Republic of Serbia, "*City Krusevać, Orahovac*" stating that on 23 June 1955 he had been married in Bela Crkva and that the name of his mother had been J.B..

The appellant requested to annul the challenged decision and return the case for retrial or accept the appeal as grounded and reverse the decision.

Legal reasoning:

1. 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. According to Section 7.1 lit. a of Administrative Direction No. 2007/5 as amended by Law No. 03/L-79, this period has “*to be calculated from the moment at which an event takes place, the day during which that event occurs or that action takes place shall not be counted as falling within the period in question*”. So the period has to be counted from the 23 February 2011, on which the document was served. The period would have ended on 27 March 2011. As this was a Sunday, according to Section 7.2 of Administrative Direction No. 2007/5 as amended by Law No. 03/L-79, the period ended on the first following working day, that is on 28 March 2011, on which the appeal was submitted.

2. However, the appeal is ungrounded.
 - a) The appellant states that he is the owner of the litigious property as he had inherited it. He has, however, not submitted any evidence that he is the heir of J.A.. He has not conducted the proper inheritance procedure so that he is not able to submit any document sustaining that he is her heir. As it is not in the scope of jurisdiction of the Court to decide on inheritance issues – and the decision of the Court is without prejudice to an inheritance proceedings –, the Court will not decide whether the appellant is the heir of J.A.. Nevertheless, the Court wants to add that according to Articles 11 to 16 of Law No. 2004/26 (Law on Inheritance in Kosovo) a stepson is no heir at law. The submitted power of attorney does neither prove that the appellant is the heir, nor does it prove that the appellant is the owner of the claimed parcel. This follows from the fact that a power of attorney does not relate to ownership or heritage, in this case the power of attorney even does not regard the claimed parcel.

 - b) As the power of attorney does not regard the claimed parcel it cannot give the appellant the right to claim the parcel (even only) on behalf of his deceased stepmother.

 - c) Also, as the KPCC already has outlined, the claimant has not submitted evidence proving his right to submit a claim on behalf of his stepmother as a family household member.

Section 5.2 of UNMIK Administrative Direction 2007/5 as amended by Law No. 03/L-79 provides: *“In proceedings before the Commission, where a natural person is unable to make a claim, the claim may be made by a member of the family household of that person”*. According to Section 1 of the aforementioned regulation, “member of the family household” means: *“spouse, children (born in and out of wedlock or adopted) and other persons whom the property right holder is obliged to support in accordance with the applicable law, or the persons who are obliged to support the property right holder in accordance with the applicable law”*.

The appellant has submitted the death-certificate of his stepmother and, together with his appeal, his own marriage certificate, issued already on 25 May 2009 by the Republic of Serbia, *“City Krusevac, Orahovac”*. He has given no explanation why he had not already submitted this document during the claim proceedings before the KPCC, which decided on 2 September 2010, that is more than one year later. Therefore the Court does not accept this evidence and does not consider it (Section 12.11 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079: *“New facts and material evidence presented by any party to the appeal shall not be accepted and considered by the Supreme Court unless it is demonstrated that such facts and evidence could not reasonably have been known by the party concerned”*). But even if the Court would consider it, mentioning just the name of his mother J.B., which is not even the same as the name of the deceased, J.B., does not prove that the appellant was adopted by his stepmother or that there was any obligation of his stepmother to support him or vice versa. Also the death certificate of his stepmother does not prove any family household member relationship between the appellant and his stepmother.

Costs of the proceedings:

Pursuant to Annex III, Section 8.4 of Administrative Direction (AD) 2007/5 as amended by Law No. 03/L-079, the parties are exempted 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), considering that the value of the property at hand could be reasonably estimated as being comprised between € 2500 and 5000: € 25.

These court fees are to be borne by the appellant who loses the case. According to Article 46 of the Law on Court Fees, the deadline for fees' payment by a person with residence or domicile abroad may not be less than 30 days and no longer than 90 days. The Supreme Court decides that, in the current case, the court fees shall be paid by the appellant within 90 days from the day the judgment is delivered to him.

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.

Signed by: Antoinette Lepeltier-Durel, EULEX Presiding Judge

Signed by: Anne Kerber, EULEX Judge

Signed by: Sylejman Nuredini, Judge

Signed by: Urs Nufer, EULEX Registrar