

**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-040/12

Prishtinë/Priština, 20 June 2012

In the proceedings of

B. I.
Obiliq/Obilic
Appellant

vs

D. C.
Kraljevo
Serbia

Claimant/Appelle

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/51/2009, regarding case file registered at the KPA under the number KPA22371, dated 18 August 2009, after deliberation held on 20 June 2012 issues the following

JUDGMENT

- 1- **The appeal of B. I. against the decision of the Kosovo Property Claims Commission KPCC/D/A/51/2009 (regarding case file registered at the KPA under number KPA22371), dated 19 August 2009 is dismissed as inadmissible.**
- 2- **The costs of the proceedings determined in the amount of € 60 (sixty euro) are to be borne by the appellant, B. I. and paid to the Kosovo Budget within 15 (fifteen) days from the day the judgment is delivered or otherwise through compulsory execution.**

Procedural and factual background:

On 01 March 2007 D. C. acting as a family household member of M. C., filed a claim with the Kosovo Property Agency (KPA) in regard to parcel no. 1675, described as field with a surface of 2 ha 47 ar 78 sq m, situated in Dragodan Obiliq/Obilic.

The claimant stated that he is a child of the deceased property owner and that the property was lost on 1 June 1999 as a result of the armed conflict in 1998/1999. He claimed that the property is usurped by an unknown person and requested repossession.

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

- Possession List no. 94, issued on 4 April 2002 by the Cadastral office of Republic of Serbia under the name of C. D. M.;
- Death certificate of M. C.;
- Deed of gift, entered between C. M. and C. D., dated 21 August 2001 and certified by the Municipal Court in Kraljevo on 21 August 2001;
- Extract from possession list no. 186 dated 08 November 1963, issued by the cadastral municipality of Obiliq/Obilic under the name of C. D. M.;

On 09 November 2007 officers of the KPA went to the alleged parcel and put a notification sign informing that the property is subject of a claim. According to the notification report the parcel was found occupied by an unknown person and that it represents cultivated land. In 2010 the Executive Secretariat of the KPCC checked the 2007 notification using gps and orthophoto and confirmed its accuracy. According to a report dated 09 March 2010 and a copy of the cadastral map, on the day of notification – 09 March 2007 the notification sign was placed correctly in parcel 1675. The cadastral map shows that parcel no. 1675 is a field and there is a building which is situated on the boundary line between parcel 1675 and the neighbouring parcel on the east side (lower part).

Within 30 days of the notification the Executive Secretariat did not receive information that any other person (different from the claimant) would intend to take part in the proceedings.

On 18 August 2009, the KPCC with its decision KPCC/D/A/51/2009 (regarding case file registered at the KPA under the number KPA22371) decided that the claim of D. C. was grounded, i.e. that the PRH was the owner of the claimed property.

On 23 November 2010 an individual decision for the identification of the claimed property was issued.

On 24 January 2012 B. I. (henceforth the appellant) filed an appeal against the above mentioned decision claiming that his father bought this property from M. C. in 1970 and has been using it ever since. He claims that the house he lives in was built in the disputed parcel, that there is an acacia tree and other fruit trees that were planted 30 years ago. He explains that he has heard about the current dispute for the first time in September 2011.

On 24 April 2012, the claimant, now appellee filed a response to the appeal, stating that it is inadmissible and unfounded on its merits.

Legal reasoning:

The appeal is inadmissible, as filed by a person who is not entitled to file one.

Section 10.2 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 provides that any person other than the claimant who is purporting to have a right on the disputed property shall become party of the proceedings provided that such person has informed the Executive Secretariat of his/her intention to participate in the proceedings within 30 days of being notified of the claim.

The law in section 10.1 *ibid* provides that the Secretariat shall “make reasonable efforts to notify any other person who may have legal interest in the property”. It does not provide for a specific description of what “reasonable efforts” mean with the exception that “in appropriate cases, such reasonable efforts may take form of an announcement in an official publication”. The grammatical interpretation of the text invokes the conclusion that publication is rather an exception than a rule and that the rule itself has to be deducted on the basis of common logic and existing customs. It is up until now accepted by the Court that by rule the notification is done by placing a sign (plate) with information regarding the claim in 3 languages (English, Albanian and Serbian) in/on the property in question and as long as the sign has been placed in/on the correct place/object – parcel, house, etc. the notification is considered correctly done

and possible interested parties duly notified of the procedure in front of the KPA, unless there is a reason to believe otherwise.

In the current case the notification sign was placed in the disputed parcel and there is no reasonable explanation as to why the appellant could not see the sign and consequently inform the Secretariat of his intention to participate in the proceedings. He claims that he has learned about the dispute in September 2011 but this is highly unlikely considering that according to appellant's statement in the appeal he lives in a house in the same parcel. That his house is situated in this same parcel is on its turn unlikely as there are no buildings in the disputed parcel with the exception of one construction which is between parcel 1675 and the neighbouring one on the east side, as it can be seen from the cadastral map dated 09 March 2010. The only possibility is that this building is the house the appellant is referring to.

In both cases the appellant is either purporting rights over a different parcel (if his house is not in the disputed) in which case he has no legal interest in the current case or, if it is true that his house is the one on the border between 1675 and the neighbouring east parcel, then he has seen the notification sign, placed there on 9 November 2007 and should have informed the Secretariat as prescribed in section 10.2 *ibid*. As long as he has not done this and he has not taken part in the proceedings even though duly notified he is not entitled to an appeal against the decision of the KPCC.

Therefore the appeal had to be dismissed on procedural grounds (Section 13.3 subparagraph (b) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 in relation with section 12.2 *ibid* and art. 196 of the Law on contested procedure).

Court fees:

Pursuant to Annex III, Section 8.4 of Administrative Direction (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 the 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): € 30.

These court fees are to be borne by the appellant who loses the case.

According to Articles 45.1 of the Law on Court Fees, the court fee has to be paid within 15 (fifteen) days. As a consequence of non-payment within the deadline, compulsory execution including a fine as provided by Article 47 of the same law shall be ordered.

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, Presiding EULEX Judge

Elka Filcheva-Ermenkova, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar