

**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-92/11

Prishtinë/Priština, 26 July 2012

In the proceedings of

R. H.

Appellant

v.s

Đ. M. P.

Claimant/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/23/2008 (case file registered at the KPA under No KPA 20162), dated 28 August 2008, after deliberation held on 26 July 2012, issues the following

JUDGMENT

- 1- The appeal filed by R. H. on 5 July 2011 and registered under No. GSK-KPA-A-92/11 is accepted as grounded.
- 2- The decision of the Kosovo Property Claims Commission KPCC/D/R/23/2008, dated 28 August 2008, as far as it regards the case KPA20162, is annulled.
- 3- The claim of Đ. M. P. is dismissed.
- 4- Costs of the proceedings determined in the amount of € 50 (€ fifty) are to be borne by the appellee and paid within 90 (ninety) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 4 December 2006, Đ. M. P., acting as a family household member on behalf of his deceased father, filed a claim with the Kosovo Property Agency (KPA), seeking confirmation of his ownership right and repossession over the cadastral parcel 789/2, with a surface of 83 square meters, described as a house – building in the village of Gracë/Grace, Vushtrri/Vučitrn.

He stated that this cadastral parcel was owned by his father M. S. P. and was occupied.

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

- Transcript of Possession List No. 221, issued on 6 September 1999 by the Municipality of Vushtrri/Vučitrn, Cadastral Zone of Gracë/Grace;
- His Birth Certificate, issued on 2 November 1998 by the Municipality of Vushtrri/Vučitrn; and ID Card, issued on 19 March 1997 by the Municipality of Vushtrri/Vučitrn.

Possession List No. 221 showed that M. S. P. was the owner of the claimed parcel, which is located in the cadastral zone of Gracë/Grace, Municipality of Vushtrri/Vučitrn.

Later on in the proceedings, the claimant submitted the following documents:

- Death Certificate of the property right holder, No. 203-2/251, issued on 26 October 2007 in Kralevo, Municipality of Vushtrri/Vučitrn;
- Transcript No. 952-1/2010-2123 of Possession List No. 221, issued on 28 May 2010 by the Cadastral Office of Vushtrri/Vučitrn;
- Copy of Plan No. 953-1/2010-284, issued on 24 August 2010;
- Extract No. 952-1/2010 -2783 from the Possession List No. 53, issued on 27 September 2010 by the Cadastral Office of Vushtrri/Vučitrn; and
- ID Card, issued on 12 February 2009, Belgrade – Republic of Serbia.

Among the documentation submitted by the claimant and named by the KPA as “additional documents”, a statement given by the claimant on 10 November 2010 was included in the case file.

This statement submitted by the claimant indicates that S. P. – spouse of the property right holder (who is at the same time mother of the claimant) – was in possession of the immovable property which is subject of the litigious case KPA20162 until 30 December 2004.

In October 2007, the KPA notification team went to the place where the parcel was allegedly situated and put up a sign indicating that the property was subject to a claim and that interested parties should file their response within 30 days, and found that the property was not occupied.

On 3 September 2010, the notification was checked based on cadastral data, orthophoto and GPS coordinates and was found to be accurate.

The KPA asked the claimant to submit the death certificate of his father, a decision of inheritance or another document to prove the ownership right and the death of the property right holder. The claimant responded that his father died on 22 March 1993 and that no inheritance procedure was initiated.

According to Possession List No. 221, issued by the Department of Cadastre, Geodesy and Property, dated 25 September 2007, the property which is subject of the claim is recorded under the name of M. S. P.. This Possession List was verified by the KPA verification team and was found to be authentic.

In the KPCC case processing report it is ascertained that the loss of possession over the abovementioned property occurred on 16 July 1999 due to the general security situation in Kosovo.

In the claim form signed by the claimant, other KPA case files and the entire proceedings before the KPA/KPCC, no person was mentioned as a respondent in the claim filed.

In its decision KPCC/D/R/23/2008, dated 28 August 2008, the Kosovo Property Claims Commission (KPCC) established that the claimant had proven the property right holder's ownership right over 1/1 of the claimed immovable property and that he was entitled to possession of this property, and any person occupying this immovable property should vacate it within 30 (thirty) days from the date of receipt of the decision.

In a handwritten and signed notice to the KPA, related to the cases KPA20160 to KPA20169, received by the KPA as fax on 10 November 2010 and apparently evoked by circumstances concerning the proceedings parallel to this case, the claimant stated the following: *"The property on the name of M. (S.) P. is not sold since no one had the legal right to do so, which can be seen in given authorizations and statements that are not verified from the inheritors of the property. All property is in the possession of the late wife S. P. until 30.12.2004 when she passed away on her property and in her house in Grace, Municipality of Vucitrn, and there is documentation where she was buried"*.

In the file of a parallel case (GSK-KPA-A-93/11 (KPA20163)), the Court found the note of a discussion between a KPA officer and the appellant on 2 November 2010. In this the appellant after having been asked for a certified contract explained that he had tried to have the sales contract certified, but that the appellee (other than his sister) was against this. The appellant furthermore told the KPA officer that he had worked the parcels (the parties' dispute about several parcels in parallel proceedings) for twenty years based on an oral agreement with the claimant. He explained furthermore that the claimant's mother was living in the claimed properties until her death in 2004 and that a part of the products of the parcels he, the appellant, gave to the claimant's mother as per their oral agreement.

The claimant received the abovementioned KPCC decision on 3 March 2011 and on 10 March he requested the KPA to put the claimed immovable property under its administration.

On 14 June 2011, a notice of participation in the proceedings was signed by the appellant's brother, S. H., who expressed his interest to participate in the legal proceedings before the KPA, while the Commission had already issued its decision.

On 5 July 2011, R. H. in the capacity of an appellant filed an appeal with the Supreme Court of Kosovo against this decision, proposing to have the claimant's claim under No. KPA20162 rejected as it was the case

when the KPA decided on the other claims (KPA20163, KPA20164, KPA20165, KPA20166, KPA20167, KPA20168 and KPA20169).

The appellant explained that whereas he participated in the proceedings in the parallel cases KPA20163, KPA20164, KPA20165, KPA20166, KPA20167, KPA20168 and KPA20169 because he saw the notification and the KPA officers asked him whether he wanted to take part in the proceedings, in this case he did not see the notification. This was due to the fact that at the time of the notification he did not use the house and so did not see the sign. As the house looked like an abandoned one, the KPA officers obviously did not think there would be someone using it and did not ask him to participate (as they did in the parallel cases). The appellant challenges the Commission's decision as he had bought the parcel from the claimant. To support these allegations, he submitted an uncertified sales contract on this immovable property, dated 19 May 2001, showing that he bought the parcel from S. P. (the appellee's mother), B. M. (the appellee's sister) and D. P., the appellee/claimant, who also represented his mother and his sister.

The appeal was served to the claimant (hereinafter: "the appellee") on 3 August 2011.

Responding to the appeal, the appellee requested the appeal to be rejected as inadmissible and refused as ungrounded. He stated that the appellant was not a party to proceedings although he was duly notified by the KPA of the publication and notification regarding the claim for confirmation of ownership under the number KPA20162, but that he did not participate in the proceedings before the KPA. Furthermore, the appellee stated that the appellant tried to illegally take away his property. He also declared that in the above mentioned parallel cases (in which the KPCC dismissed the appellee's claims) the KPCC erroneously established the facts and wrongly applied the material law.

Legal reasoning:

The Supreme Court, following the consideration and assessment of evidence retrieved and administered by the Commission, and assessing the appellant's allegations as well as the appellee's response to the appeal, found that the appeal is admissible and grounded.

1. The appellant did not take part in the proceedings before the KPA. Nevertheless in this special case the appeal is admissible. The appellant has explained that he did not see the notification sign as he did not use the house in 2007 (time of the notification). As the KPA officers noted that the property was a damaged house with backyard and was not occupied at the time of the notification, the allegation of the appellant that he did not use the property is plausible. Therefore the appellant has

sufficiently explained and excused that he did not respond to the claim.

The first time the appellant could have known of the proceedings is the 14 June 2011, when his brother was notified of the proceedings. Taking this date into consideration, the appellant filed his appeal on 5 July 2011 within three weeks and therefore without undue delay.

Therefore, under such state of facts, the appeal of the appellant is considered as admissible.

2. The appeal also is grounded as the case is not within the scope of jurisdiction of the KPCC and the KPA Appeals Panel.

Section 3 para 1 subpara (a) and (b) of UNMIK Regulation No. 2006/50 as amended by Law No. 03/L-079 provides that the Commission has the competence to resolve conflict-related ownership claims with respect to private immovable property, including agricultural and commercial property, which involves circumstances directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999 and where the claimant is not now able to exercise such property rights.

There is no indication that the appellee or his legal predecessor lost the property due to circumstances related to the armed conflict. On the contrary, with his handwritten statement of 10 November 2010, the appellee claimed that the property had been in the possession of his mother until her death in 2004. The Court notes that in the parallel case GSK-KPA-A-93/11 (KPA20163), the appellee, who in this case is the appellant, with his appeal of 8 July 2011 alleges that he never stated that his mother lived on the property until 2004 but that his family lost the possession of the property after leaving Kosovo in 1999. Taking into consideration the handwritten and signed statement which was sent by fax from Belgrade (Fax-No. 0038111) this allegation, however, is obviously false and in violation of Article 9 of the Law on Contested Procedure which states that the parties have a duty to tell the truth before the court. Therefore, according to the appellee's own statement, the case is without the jurisdiction of the KPCC and KPA Appeals Panel.

There is no contradiction between the statement of the appellant that the property already was sold in 2001 and the statement of the appellee. In the discussion with a KPA officer of 2 November 2010 the appellant informed the KPA that there had been an oral agreement according to which the appellee's mother lived in the house and received part of the crop the appellant could obtain from the property. This fits to the statement of the appellee, the details of the appellant's statement also

speak in favour of the truth of the appellee's statement.

The statements of both parties confirm that the case is not within the scope of the jurisdiction of the Court, as the property would not have been lost because of the armed conflict of 1998/1999 as the mother of the appellee lived there until 2004.

The Court wants to add two more indications which speak against the appellee's allegation that the property was lost in 1999. Firstly, the signature on the sales contract of 18 May 2001 at first sight resembles the signature of the appellee on the claims form. Secondly, the Court found a statement submitted by the appellant in the parallel case GSK-KPA-A-93/11. This statement reads as follows:

“ Statement: I, the undersigned P. Đ. from the village Grace, Municipality of Vucitrn, now with residence in Uljimi Municipality of Vršac on my behalf and as authorized in the name of my mother P. S. from Grace village and in the name of my sister M., born P., B. from Kosovo Polje hereby irrevocably declare that I recognize my signature on the purchase contract from 18.5.2001, concluded with H. (R.) R. from Gornje Stanovce village, Municipality of Vucitrn regarding the sale of our immovable property that is registered in possession lists No. 221 and No. 22 cad. Mun. Grace, and I allow H. R. to enter into the possession of the mentioned property”.

This statement was certified on the same day by the Municipal Court of Vršac VR.Nr. 1085/2001 and could be verified by the KPA. Both indications speak against a loss of the property in 1999. Whether the sales contract is valid insofar is not relevant.

As a consequence the case is not within the scope of jurisdiction of the Court.

Since the claim neither relates to the armed conflict nor is a consequence of such conflict, the Commission' decision regarding the case KPA20162, is taken in violation of provisions under Section 3 para 1 subpara (a) and (b) of UNMIK Regulation No. 2006/50 as amended by Law No. 03/L-079, due to which the same decision has to be annulled and the claim dismissed as impermissible due to the lack of jurisdiction (Section 11.4 (b) of UNMIK Regulation No. 2006/50 as amended by Law No. 03/L-079).

The Courts decision is without prejudice to the right of the appellee to seek confirmation of his property before the competent local authorities.

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, 10.12 and 10.1 of AD 2008/2), considering that the value of the property at hand could be reasonably estimated as being comprised at € 2.000: € 20.

These court fees are to be borne by the appellee 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 appellee within 90 days from the day the judgment is delivered to him. 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

Philip Drake, EULEX Chief-Registrar