

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-79/12

Prishtinë/Priština, 5 December 2012

In the proceedings of:

H. B.

Appellant

vs.

R. J.

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/A/121/2011 (case file registered at the KPA under No. KPA00081), dated 7 September 2011, after deliberation held on 5 December 2012, issues the following

JUDGMENT

- 1- The appeal of H. B. against the decision of the Kosovo Property Claims Commission KPCC/D/A/121/2011 (case file registered at the KPA under No. KPA00081), dated 7 September 2011 is dismissed as impermissible.**

- 2- The appellant has to pay the costs of the proceedings which are determined in the amount of € 60 (€ sixty) within 15 (fifteen) days from the day the judgment is delivered or otherwise through compulsory execution.**

Procedural and factual background:

On 30 May 2006 R. J. filed a claim with the Kosovo Property Agency (KPA), seeking repossession over a property located in Gjilan/Gnjilane, parcels Nos. 892, 893 and 894 (in total 1 ha 61 ar 65 m²). She asserted that she is the owner of the properties which she occupied but had to leave because of the armed conflict of 1998/1999. To support her claim, she provided the KPA amongst others with the following documents:

- Possession list No. 786 from 08 August 2005, issued by the UNMIK under the name of the claimant R. J. regarding the three parcels – 892, 893 and 894;
- Purchase contract regarding a field in the area of village Gornji Livoc, at the place called “Jaruge”, dated 14 December 1950 in which B. J. was a buyer. The surface of the land is not specified, it is individualized by detailed description of the borders of the field;
- Purchase contract regarding a field in the area of village Gornji Livoc, at the place called “Jaruge”, dated 25 December 1965 in which B.J. was a buyer. The surface of the land is not specified, it is individualized by reference to a Possession List with the number 1853;

The KPA notified potential interested parties for the existing claim by putting signs in the field (the three parcels) two consecutive times - on 28 October 2008, on 10 December 2009. There was one additional notification, from 1 June 2011, when a sign was also put in front of the building, located in parcel 893. In reply to the second notification R. H. B., born on 03 August 1958 informed the Executive Secretariat that he claims rights regarding the litigious parcels (he signed notice of participation on 10 December 2009). The respondent claimed that he is the rightful owner and presented various documents, among them a contract for transfer of properties signed by S. T.A. as a seller and R. A. as a buyer, dated 18 February 1941. He did not present any evidence that he is in any way related to the buyer.

With decision KPCC/D/A/121/2011 dated 07 September 2011 the KPCC has accepted that the claim is founded. The Commission assessed that the presented documents legitimize the claimant as the rightful owner. The respondent however has failed to establish any family relationship with the person he claimed he has inherited his rights from – R. A.

The decision was served to the parties – on 22 December 2011 to the claimant .R J. and on 08 December 2011 to the respondent R. B. Within 30 days of the service none of them appealed the decision.

On 29 May 2012 H. B. born 10 May 1946 appealed the decision. He claims that his father Z. B. purchased the disputed parcels in 1946. This land was afterwards forcibly taken away from the family by the former authority thus forcing them to leave Kosovo and go to Turkey. This happened in the 60s of the twentieth century. The appellant on the basis of power of attorney given to him by his father came back to Kosovo after 1999. Here he found out that the land has been cultivated before the beginning of the war by B. J. Then he filed a claim regarding his rights in front of the local municipal court and at the same time build a small house in the land and wrote on it that it is not for sale and that this is his (H. B.) land. He proceeded with the dispute in the court in Gjilan/Gnjilane to settle the issue with R. J. He claims he did not know about the existence of the Kosovo Property Agency and he only heard about it when he learned that there is a person from the KPA who was taking pictures of the land and then the appellant went to the Agency to enquire about what was going on. There (in the KPA) he was told that a person named R. H. B. is involved, but this R. has nothing to do with this land. He (the appellant) thinks that the claimant intentionally did not notify the KPA that this R. is a wrong person.

The claimant, now appellee, has filed a response to the appeal. She asserts that the appeal should not be dealt with on its merits as the appellant did not take part in the proceedings in front of the KPA. Alternatively she claims that the evidence presented by the appellant is not relevant.

Legal reasoning:

The appeal is impermissible on procedural grounds (Section 13.3 (b) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079) as the appellant, has not taken part in the proceedings in the first instance.

Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 stipulates the following: "Within thirty (30) days of the notification to the parties by the Kosovo Property Agency of a decision of the

Commission on a claim, a party may submit [...] an appeal against such decision". Also Art. 176.1 of the Law 03/L-006 on Contested Procedure provides that the right to file an appeal belongs to the parties at the first instance proceedings.

A party to the claim and the related proceedings is "*any person other than the claimant who is currently exercising or purporting to have rights to the property which is the subject of the claim and/ or any other person who may have a legal interest in the claimed property [...], provided that such person informs the Executive Secretariat of his or her intention to participate in the administrative proceedings within thirty (30) days of being notified of the claim by the Executive Secretariat in accordance with Section 10.1*" (Section 10.2 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, emphasis added).

H. B., however, has not been a party in the first instance proceedings before the KPCC. To explain such a situation, the appellant asserts that he was not aware of those proceedings. Indeed, Section 10.3 of UNMIK Regulation 2006/50 as amended by the Law No. 03/L-079 reads: "*A person with a legal interest in the claim who did not receive notification of a claim may be admitted as a party at any point in the proceedings."*"

Therefore, the Supreme Court has to check whether the appellant was notified of the claim. The way to notify of a claim in this exceptional mass claim process is foreseen by section 10.1 of UNMIK Regulation 2006/50 as amended by the Law No. 03/L-079. According to this provision, the Executive Secretariat has to make reasonable efforts to notify any person who may have a legal interest in the property of the claim.

The Court notes that in response to the one of the notifications (the one from 2009) the respondent R. H. B. informed that he has legal interest in the proceedings, but the appellant H. B. did not. There was another notification from 1 June 2011, when a sign was placed right in front of the building the appellant claims to have had built himself (as it can be seen from the photograph in the file – page 76 of the KPCC file). The appellant did not respond to this notification either. He does not give any reasonable explanation as to why he did not inform the KPCC that he has legal interest and that he wants to take part in the proceedings. On the contrary he himself explains (in the appeal) that when he learned that a person from the KPA is making pictures of the land, he went to the Agency and inquired personally about the proceedings but he did not ask to be included in them as an interested party. It could only be concluded that the appellant was notified regarding the proceedings, he had the possibility to express his willingness to take part in them but he did not and therefore he has no justification for not informing the KPCC for his willingness to be included as a party. As the appellant H. B. did not fulfill the obligation to inform the KPA about his interest in the claim, the appellant has no excuse as to why he did not take part in the first instance proceedings before the KPA.

Therefore the appellant also cannot be admitted as a party to the proceedings in the second instance before the KPA Appeals Panel. The appeal has to be dismissed as impermissible (Section 13.3 (b) of UNMIK-Regulation 2006/50 as amended by Law No. 03/L-079; see also Art. 195.1 of the Law On Contested Procedure).

As the appeal is impermissible, the Supreme Court is not allowed to decide on the legal questions concerning the material rights of the parties.

Costs:

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 – dismissal of the appeal (10.21, 10.15 of AD 2008/2): € 30.

These court fees are to be borne by the appellant who loses the case. According to Article 45 Paragraph 1 of the Law on Court Fees, the deadline for fees' payment is 15 days. Article 47 Paragraph 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