

**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-189/13

**Prishtinë/Priština,
23 April 2014**

In the proceedings of

N.S

Appellant

vs.

M.V.S

Claimant/ Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Elka Filcheva- Ermenkova, Presiding Judge, Dag Brathole and Erdogan Haxhibeqiri, Judges, on the appeal against the decisions of the Kosovo Property Claims Commission KPCC/D/A/147/2012 (case file registered as KPA16519), dated 19 April 2012, after deliberation held on 23 April 2014, issues the following

JUDGMENT

The appeal of N.S against the decisions of the Kosovo Property Claims Commission KPCC/D/A/147/2012 (case file registered as KPA16519), dated 19 April 2012 is dismissed as impermissible.

Procedural and factual background:

1. On 8 December 2006 M.V.S filed a claim with Kosovo Property Agency (KPA) seeking confirmation of his property right and repossession over parcel 5300/3 of 12 ar and 33 sq m a in place named Zatra, in the lands of Peja/Peć. The property was lost due to circumstances that occurred in Kosovo during 1998/1999. He presented a purchase contract for the properties from 25 September 1955 and a possession list No 3057 from 1 June 1961. Both were positively verified by the Executive Secretariat at the KPA. The ES *ex officio* established that in the current cadastral plan the property holds the same number and surface – parcel 5300/3 of 12 ar and 33 sq m.
2. The claim was treated as uncontested.
3. Further on the KPCC accepted the claim as founded and issued the appealed decision, *i.e.* KPCC/D/A/147/2012 (case file registered as KPA16519), dated 19 April 2012. The KPCC recognized that the claimant is the owner of the properties. The decision was served on the claimant on 23 November 2012.
4. On 2 August 2013 N.S filed an appeal against the decision claiming that it was issued on the basis only of the evidence presented by the claimant and it violates material law. The appellant did not take part in the proceedings, even though with judgment of the Municipal Court of Peja/Peć (nr. 25/2007 dated 22 October 2007) the appellant is entitled to an area of 1 ar and 44 sq.m of parcel 5300/3 (which in its entirety has the surface of 12 ar and 30 sq m).
5. He presented the referred judgment and copy of a cadastral plan.
6. It turns out that while the proceedings in front of the KPCC were ongoing he at the same time filed a claim against M.V.S for part of the same property in front of the Municipal Court in Peja/Peć – on 16 January 2007. Obviously he knew about the claim of M.V.S filed earlier in front of the KPCC but for some reason decided not to inform the KPCC for his interest in the claimed parcel.

7. According to the enacting clause of the referred judgment the Municipal Court in Peja/Peć has confirmed that N.S is the owner of parcel 5300/3 with surface area of 1 ar 44 sq m. on the basis of a purchase contract (from an unknown date).
8. According to the argumentative part of the decision N.S filed his claim against M.V.S on 16 January 2007, *i.e.* after the entering into force of UNMIK/REG/2006/50 on the resolution of claims relating to private immovable property, including agricultural and commercial property as amended by Law 03/L-79 (hereinafter Law 03/L-79) and after M.V.S had already filed his claim with the KPA, which happened on 8 December 2006.
9. The decision explains that in the proceeding M.V.S was represented by an authorized lawyer. It also explains that M.V.S on an unknown date sold the property to a person named H.A who on his turn sold it to N.S (again on an unknown date). According to the decision the purchase contracts were lost during the conflict.
10. The decision does not explain why the Court processed the claim of N.S when there was enough data that the property dispute is related to the armed conflict in Kosovo of 1998/1999.
11. On 31 October 2013 the claimant now appellee M.V.S filed a response to the appeal. He asserts he is the owner of the parcel. He purchased it in 1955, it is under his name in the cadaster, he never met H.A and any evidence presented by N.S is counterfeit. The documents related to the parcel have never been destroyed. Both the archives in the cadaster and the court in Peja/Peć were intact.

Legal reasoning:

Admissibility of the appeal:

12. The appeal is impermissible.
13. Section 10.2 Law 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.
14. In this particular case it is clear that the appellant had the possibility to take part in the proceedings in front of the KPCC. Instead of informing the KPCC that he claims legal rights towards the parcel he filed a parallel claim for the same property in front of the Municipal Court in Peja/Peć.

15. It is not known for what reason the Municipal Court processed this claim, which was not within its jurisdiction. The Court refers to section 18 of Law 03/L-79 which excludes the jurisdiction of regular courts towards claims under section 3.1 *ibid* when proceedings in respect of such claim have not commenced prior to the date of its entering into force. Law 03/L-079 (previously UNMIK/REG/2006/50) entered into force on 16 October 2006. After that the regular court had no jurisdiction in property disputes related or originating from the armed conflict of 1998/1999.
16. However these issues are irrelevant for the current procedure because the Supreme Court found the appeal impermissible.
17. On the basis of the above and in accordance with section 12.2 of Law 03/079 in relation with art. 196 and art. 186.3 of the Law on Contested Procedure the Court decided as in the enacting clause.

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.

Elka Filcheva-Ermenkova, EULEX Presiding Judge

Dag Brathole, EULEX Judge

Erdogan Haxhibeqiri, Judge

Urs Nufer, EULEX Registrar