

**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-186/11

Prishtinë/Priština, 22 June 2012

In the proceedings of

D.L.

Appellant

represented by

M.L.

Claimant

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/61/2010 (case files registered at the KPA under the numbers KPA08476 and KPA08477), dated 25 February 2010, after deliberation held on 22 June 2012, issues the following

JUDGMENT

- 1- The appeal of D.L. against the decision KPCC/D/A/61/2010, dated 25 February 2010, is dismissed as belated.
- 2- Costs of the proceedings determined in the amount of € 60 (€ sixty) are to be borne by the appellant and have to be paid to the Kosovo Budget within 90 (ninety) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 11 January 2007, M.L., acting as a family household member on behalf of her deceased father-in-law, filed several claims with the Kosovo Property Agency (KPA), seeking to be recognized herself as the owner of different parcels of land acquired by inheritance and claiming repossession. She explained that these parcels had belonged to her deceased father-in-law M.L.. She stated that the property had been usurped as a result of the circumstances 1998/1999 in Kosovo and that the date of loss was 12 June 1999.

To support her claim, she provided the KPA with the following documents:

- her Marriage Certificate
- Possession List No. 38 issued by the Cadastral Office of Podujevë/Podujevo for the Cadastral Municipality of Peran/Perane on 8 October 1997.

Possession List No. 38 showed that amongst other parcels M.L. was the owner of the claimed parcels as follows:

| Number of appeal and KPA case file | Data concerning the claimed parcel |
|------------------------------------|---|
| GSK-KPA-A-186/11 (KPA08476) | Parcel no. 526, at the place called "Labske Njive-Kod R", Peran/Perane, a 2 nd class field with a surface of 5 ar and 81 m ² |
| GSK-KPA-A-187/11 (KPA08477) | Parcel no. 616, at the place called "Iznad Reke-Obrania\A", Peran/Perane, a 1 st class field with a surface of 40 ar and 63 m ² |

On 25 February 2010, the Kosovo Property Claims Commission (KPCC) with its decision KPCC/D/A/61/2010 dismissed the claims. Under No. 30 of its decision the Commission stated that as the claimant was not a family household member of the property right holder. Although the claimant had been contacted several times by the KPA, she had not submitted the necessary power of attorney of a family household member of the property right holder. Therefore the KPCC declared that the claimant had failed to establish her capacity to lodge a claim on behalf of the property right holder (section 5.2 of UNMIK AD 2007/5 as amended by Law No. 03/L-079).

At the end of the decision, the KPCC explained that an appeal against this decision had to be filed within 30 (thirty) days of the notification to the parties.

The decision was served on the claimant on 12 January 2011. On 11 October 2011, the claimant filed six identical appeals with the Supreme Court, each of them concerning one separate claim, two of the appeals relating to the claims which are the topic of this decision. The other appeals concerned four claims which had been decided by the KPCC in another decision.

The claimant now requested that the Supreme Court should provide her son, D.L., with the right of repossession of the property registered as the property of M.L. and located in the cadastral municipality Peran/Peranë.

The claimant explained that her father-in-law, M.L., had died on 11 December 1989. The appellant explained furthermore that her husband, J.L., had died on 29 August. After the death of her father-in-law, the inheritance procedure had been completed and her son, D.L., had been declared one of the heirs. In her appeal the appellant furthermore declared that she would now submit the request not on her own behalf or that of her father-in-law, but on behalf of her son, D.L., who was a legal successor to the property right holder, his late grandfather M.L.. The appellant stated without further explanation that her son had not been able to submit the request on his own at the time when the request had to be submitted. She stated that she had obtained authorization from her son before she submitted the claim. To sustain this allegation, she provided the Supreme Court with a power of attorney, reading that D.L. authorized the claimant to submit requests – file appeals regarding the decision of the KPA in the cases KPA08466, KPA08469, KPA08471, KPA08473, KPA08476 and KPA08477 as well as for all the property registered in Possession List “No. 33”. The claimant was authorized to undertake all legal actions in this procedure. The power of attorney was issued in Belgrade, dated October 2011, the signature is illegible. The signature was certified under No. 13318/2011 by the Municipal Court of Novi Pazar on 10 October 2011.

There was, however, given no reason why the appeal was filed nine months after the claimant had been served with the decision.

The Supreme Court has joined the appeals according to art. 408.1 LCP. The party/parties, the facts and the legal issues of the cases are the same, only the parcels are different. Accordingly the joining ensures the efficiency of the case. Also the joining reduces the costs of the proceedings. Case GSK-KPA-A-187 (KPA08477) is joined to case GSK-KPA-A-186 (KPA08476).

Legal reasoning:

The appeals are not admissible. They had to be rejected as belated.

Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 provides: *“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 through the Executive Secretariat of the Kosovo Property Agency to the Supreme Court of Kosovo an appeal against such decision”*.

The appellant, D.L., however, has not filed the appeal within this deadline. The claimant, his representative, was served with the decision on 12 January 2011. This service to his representative has to be considered as service on the appellant (see also Article 107.1 LCP). He, however, filed his appeal only on 11 October 2011. This exceeds the deadline by far. The appellant does not explain this delay. The Court also does not see any reason which could justify the late appeal. Notably the appellant had been explicitly notified of the deadline by the text at the end of the KPCC’s decision.

Accordingly, it was not necessary to decide, whether - as the appellant had not been a party to the proceedings before the KPCC – he was entitled to file an appeal (see Section Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079: *”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”*).

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 (10.15 and 10.1 of AD 2008/2), considering that the value of the property at hand could be reasonably estimated as being comprised at € 5.000: € 30 (half portion of the fee according to tariff's number 10.1, but no more than € 30).

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. 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. 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 Registrar