

**SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA**

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I PËR APELIT TË AKP-së
ŽALBENO VEĆE KAI**

GSK-KPA-A-145/11

Prishtinë/Priština, 24 August 2012

In the proceedings of:

H.H.

Respondent/Appellant

vs.

I.Đ.

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/76/2010 (case file registered at the KPA under the number KPA39215), dated 16 June 2010, after deliberation held on 24 August 2012, issues the following

JUDGMENT

- 1- The decision of the Kosovo Property Claims Commission KPCC/D/A/76/2010, dated 16 June 2010, as far as it relates to the case registered under the number KPA39215 is annulled and the claim is dismissed as it does not fall within the jurisdiction of the KPCC.

- 2- Costs of the proceedings determined in the amount of € 60 (sixty) are to be borne by the appellee 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 15 October 2007, I.D. filed, in the capacity of family household member, a claim with the Kosovo Property Agency (KPA), seeking to recognize his grandfather B.D. as the owner of cadastral parcel No.614/1 located at the place called obrandja për mbi lum, with a surface of 0.45.41 ha, cadastral zone of Peran/Perane. He claimed that the possession of this immovable property was lost on 16 June 1999 as a result of circumstances in Kosovo in 1998/1999. He sought confirmation of the property right and repossession. The claim was registered under No. KPA39215.

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

- Possession List No.11 issued by the Cadastral Service of Municipality of Podujevë/Podujevo, dated 21 August 2001;
- Ruling of the Municipal Court of Kurshumli T. Nr.3/2008, dated 16 April 2008,
- Death Certificate of B.D. dated 25 April 2006, issued by the town of Niš.

The KPA notified the interested parties of the claim on 16 April 2010. The notification was checked based on GPS coordinates, cadastral map and orthophoto and was found to be correct.

A.H. responded to the claim, acting on behalf of his father. He stated that according to the contract dated 3 February 2009, certified before the Municipal Court of Podujevë/Podujevo Vr.nr.164/09, the litigious property was bought by his father from R.A.K/. R.A.K. had bought this immovable property from the previous sellers, namely from M.G., R.D. and Z.D. according to the sales contract certified before the Municipal Court of Podujevë/Podujevo Vr.Nr. 2151/2008, dated 23 December 2008. In support to his claims, he submitted the relevant evidence.

With its decision KPCC/D/A/76/2010, issued on 16 June 2010, the KPCC decided in favour of the claimant.

The claimant received the KPCC decision on 9 March 2011.

The respondent was served with the KPCC decision on 15 July 2011.

The respondent, H.H., (hereinafter: the appellant) filed an appeal against the above-mentioned decision before the Supreme Court on 15 August 2011.

In his appeal he alleges that the appealed decision contains essential violations of LCP, erroneous application of law, stating that he submitted to KPA legally valid evidence in relation to lawful acquirement of ownership over this immovable property, such as the contract dated 3 February 2009, certified before the Municipal Court of Podujevë/Podujevo Vr. Nr. 164/09 and the Certificate on immovable property rights issued by the Cadastral Office of Municipality of Podujevo UL-71712061-00011 dated 29 August 2008. According to him, the decision was taken based on erroneous and incomplete determination of factual situation. From this legally valid evidence, it results that he acquired the ownership over this immovable property from its owner, namely from R.A.K., whereas the latter bought this immovable property from M.G., R.D. and Z.D. based on a sales contract certified before the Municipal Court of Podujevo Vr.nr.2151/2008, dated 23 December 2008.

On 21 September 2011, the I.D. responded to the appeal, confirming the appellant's statement, adding that the cadastral parcel 614/1 with a surface of 0.45.41 ha at the place called rruga iznad reke–obrandja, cadastral zone of Peran was sold on 22 December 2008 to R.A.K. and the amount was paid in full.

Legal reasoning

The appeal is grounded. The case does not fall within the jurisdiction of the KPCC.

In order to satisfy the requirements for a valid claim, the claimant or the property right holder, as the case may be, must show that he or she had an ownership or use right in respect of the claimed property, and that he or she is not now able to exercise his or her property right due to the circumstances directly relating to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999 (see section 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079). The appellee, however, has not proved that he or legal predecessor is not now able to exercise his property right due to the circumstances relating to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999. On the contrary, he has confirmed the statement of the appellant that the property was sold after the conflict to R.K. which means that the loss of the property was not due to the conflict but to the sale.

This also results from the case file: With the sales contract on immovable property certified by the Municipal Court of Podujevë/Podujevo Vr.Nr.2151, dated 23 December 2008, R.K. bought the immovable property which is object of the claimant's claim from the sellers M.G., R.D. and Z.D. who based on the Certificate on Immovable Property Rights issued by the Cadastral Office of Municipality of Podujevë/Podujevo UL-71712061-00011, dated 29 August 2008, were the owners. Furthermore, the appellant, according to a legally valid contract certified before the Municipal Court of Podujevë/Podujevo Vr.nr.164/09, dated 3 February 2009, bought the same immovable property from R.A.K., and this has also been confirmed by the claimant, who even states that the same contract was fulfilled.

Given that the appellant acquired this immovable property through a legally valid contract certified before the Municipal Court of Podujevë/Podujevo Vr.Nr. 164/09, dated 3 February 2009, and that the claimant admitted that the property was sold and the contract was fulfilled by R.A.K. on 22 December 2008, the loss of the property does not refer to circumstances that are directly linked to the armed conflict that occurred between 27 February 1998 and 20 June 1999, as provided for under Section 3.1 subpara a and b of UNMIK Regulation 2006/5, as amended by Law No.03/L-079 of the Republic of Kosovo. Therefore the appealed decision as far as it relates to the case KPA39215 is annulled and the claim is dismissed as it does not fall within the jurisdiction of the KPCC.

Costs of the proceedings:

Pursuant to 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 Supreme Court. 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 Supreme Court.

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 (Section 10.15 dhe 10.21 of AD 2008/2), considering the court fee tariff for the decision on dismissal of the claim which is € 30.

These court fees are to be borne by the appellee that 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.

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, Chief Registrar to the Assembly of the EULEX Judges