

**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-206/11

Prishtinë/Priština, 22 June 2012

In the proceedings of:

F.F.

Appellant

vs.

I.M.

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/100/2011 (case file registered at the KPA under No. KPA00342), dated 23 February 2011, after deliberation held on 22 June 2012, issues the following

JUDGMENT

- 1- The appeal of F.F. is rejected as unfounded.
- 2- The decision of the Kosovo Property Claims Commission KPCC/D/A/100/2011, dated 23 February 2011, as far as it regards the case

registered under No. KPA00342, is confirmed.

- 3- The appellant has to pay the costs of the proceedings which are determined in the amount of € 80,50 (eighty Euro and fifty Cent) within 15 (fifteen) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 12 February 2007, I.M. filed a claim with the Kosovo Property Agency (KPA), seeking to be recognized as the (co-)owner of a property located in Miroce in Vushtrri/Vučitrn, parcel No. 908/4, a 3rd class field with a surface of 87 m², and claiming repossession. He explained that he had acquired the land by inheritance, had lost it on 1 June 1999 and that the loss was the result of the circumstances 1998/1999 in Kosovo. The claim was registered with the KPA under No. KPA00342. To support his claim, the claimant provided the KPA amongst others with the following documents:

- Inheritance Decision No. 185/2005, issued on 16 November 2005 by the Municipal Court of Vushtrri/Vučitrn, according to which I.M. was entitled to 1/3 of the estate registered in Possession List No. 184 in the Cadastral Municipality of Gojbulë/Gojbulja;
- Possession List No. 184, issued by the Republic of Serbia, Municipality of Vushtrri/Vučitrn, Gojbulë/Gojbulja on 8 September 2005, showing that Z.M.M. was in possession of the litigious parcel No. 908/4.

The submitted Possession List No. 184 could be verified as well as the Inheritance Decision.

On 10 September 2007, the KPA notification team went to the place where the claimed parcel allegedly was located and put up a sign indicating that the property was subject to a claim and that interested parties should have filed their response within 30 days. The property was found not occupied.

After the first decision of the Kosovo Property Claims Commission (KPCC) regarding the litigious property (KPCC/D/A/2008, dated 22 February 2008) had been invalidated, the notification was repeated on 30 August 2010, this time by publishing the claim in the KPA Notification Gazette No. 7. The Gazette was left

with the village leader, placed at the entrance and exit of the village Gojbulë/Gojbulja and left with several other offices of institutions occupied with property issues.

On 23 February 2011, the KPCC with its decision KPCC/D/A/100/2011 granted the claim as the claimant had established ownership over an ideal part of 1/3 of the claimed property. The claimant had to be considered as having succeeded to all the rights belonging to an owner.

The decision was served on the claimant on 1 July 2011. On the same day, the claimant requested the KPA to take the property under its administration.

On 8 November 2011, F.F. with letter of 21 October 2011 requested the KPA to reconsider the abovementioned decision as far as it regarded case KPA00342. He explained that according to his knowledge his father had bought this “road” in the 70ies and that since then it had been in use by some other families. He did not know the price and did not state that there had been a written contract. He, however, stated that the land had been in use since the 70ies without any difficulties with the family of the claimant. F.F. (from here on: the appellant) could not present any witness to this allegations but announced to search for some.

The document was served on the claimant (from here on: the appellee) on 16 November 2011. The appellee did not react.

Legal reasoning:

The submission of F.F. has to be interpreted as an appeal to the Supreme Court as this is the legal remedy prescribed by the law against a decision of the KPCC (Section 12 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079).

The appeal is admissible. Although the appellant has not taken part in the first instance proceedings, the Court accepts his appeal. As the notification of the claim had been done only by publication (which according to the jurisprudence of the Panel usually does not constitute reasonable efforts as required by Section 10.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079), the appellant not necessarily had to be aware of the claim at the date of the publication or later on.

As it is not clear when the appellant became aware of the claim, the Court in favour of the appellant assumes that the appeal had been filed within the deadline prescribed by Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079.

The appeal, however, is ungrounded.

The appellant has not given any proof that he or his father had acquired the parcel, he did not provide the Court with any documents or statements of witnesses. That the appellant was informed (how?) that the property had been bought by his father remains a mere allegation and cannot prevail over the facts the claimant has given (registration of his father in Possession List No 184, inheritance decision stating that he had inherited 1/3 of the property registered in this Possession List).

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 and 10.1 of AD 2008/2), considering that the value of the property at hand could be reasonably estimated as being comprised at € 100: € 50,50 (€ 50 + 0,5% of € 100).

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

Philip Drake, EULEX Registrar