

**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-219/11

Prishtinë/Priština,

30 October 2012

In the proceedings of

I.H.

Appellant

vs.

V.L.

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 the number KPA00339), dated 23 February 2011, after deliberation held on 30 October 2012, issues the following

JUDGMENT

- 1- The decision of the Kosovo Property Claims Commission KPCC/D/A/100/2011, dated 23 February 2011, only in its part related to the claim registered under KPA00339 and to parcel No. 1283/1, is annulled as rendered in the absence of jurisdiction.
- 2- The claim filed on 9 February 2007 by V.L., registered under KPA00339, as far as it regards parcel No. 1283/1, is dismissed as falling outside the jurisdiction of the KPCC.
- 3- Costs of the proceedings determined in the amount of € 55 (fifty-five) are to be borne by the appellee, V.L., and to be paid to the Kosovo Budget within 15 (fifteen) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 9 February 2007, V.L. filed a claim with the Kosovo Property Claims Agency (KPA), seeking repossession of several parcels, amongst them a property located in the municipality of Skenderaj/Srbica, cadastral zone Rudnik/Runik, parcel No. 1283/1 at a place called “Donje Livadhet” with a surface of 14 ar, 68 m², registered in Possession List No. 77. The claim was registered as claim KPA00339.

By its decision of 23 February 2011 (KPCC/D/A/100/2011) the Kosovo Property Claims Commission (KPCC) decided amongst others that the claimant had established he was owner of 1/3 of parcels No. 837/1 and 1283/1 and that he was entitled to the possession of the said property.

On 5 December 2011, I.H. (the appellant) filed an appeal with the Supreme Court, stating that he had not been notified of the proceedings before the KPCC and alleging that he had bought the litigious parcel in 1993 from V.L.. He provided the Supreme Court amongst others with an

uncertified sales contract, showing that V.L. sold the litigious property to I.H. in 1993 for the amount of 15.000 DEM. He also submitted a certified contract of 9 December 2008 with which the parties again transferred the parcel, this time for € 7.300. The contract was certified by the Municipal Court of Skenderaj/Srbica – No. 1214/08 –.

V.L. (henceforth: the appellee) first did not reply to the appeal. In September 2012, after the Court had issued an order giving him the opportunity to reply, he sent a handwritten statement, declaring that he indeed had sold the parcel with the contract of 2008. The appellee also submitted a copy of the contract and asked the KPA to close this case.

Legal reasoning:

The appeal is admissible. The appellant has not taken part in the proceedings before the KPCC, yet he is excused as he had not been correctly notified of these proceedings. According to the jurisprudence of the Court notification only by publication of the claim – as it had been done here - is considered as the necessary “reasonable efforts” (Section 10.1 of UNMIK-Regulation 2006/50 as amended by Law No. 03/L-079) only under extraordinary circumstances. The case does not present such extraordinary circumstances.

In order to satisfy the requirements for a valid claim, the claimant or the property right holder 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).

As the appellee has conceded that he sold the parcel to the appellant, the loss of the property is not related to the armed conflict of 1998/1999.

As the KPCC was not informed of this fact and thus could not consider it, its decision rests upon an incomplete determination of the facts (Section 12.3 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079). Accordingly the Supreme Court holds that the appeal is grounded and that the KPCC’s decision has to be annulled.

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 (10.15 and 10.1 of AD 2008/2), considering that the value of the property at hand could be reasonably estimated at € 7.300: € 25 (half portion of the fee according to 10.1, yet no more than € 30).

These court fees are to be borne by the appellee 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 the 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