

**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-4/09

Prishtinë/Priština

6 May 2011

In the proceedings of

S.L., aka S.S.

Appellant

vs.

K.M.N.

Claimant/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Antoinette Lepeltier-Durel, Presiding Judge, Sylejman Nuredini and Anne Kerber, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/13/2008 (case file registered at the KPA under the number KPA06038), dated 30 April 2008, after deliberation held on 6 May 2011 issues the following

JUDGMENT

- 1- The appeal of S.L. is dismissed as impermissible.
- 2- The appellant, S.L., has to pay the costs of the proceedings which are determined in the amount of € 55 (fifty-five) within 15 days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 19 December 2006 K.M.N. filed a claim with the Kosovo Property Agency (KPA) concerning a property located in the Municipality of Podujevë/Podujevo, in Barica, cadastral zone Surkish/Surkiš, parcel number 180, classification: commercial without building (land/forest); description: 4th class field; with a surface of 6746 m². The claim was registered as KPA06038.

The claimant asserted that he had inherited the land from his father M.N. and that he had not conducted the change of the owner's name in the Cadastral Office. He stated furthermore, that the property was illegally occupied by the family of J.L..

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

- possession list No. 17 of the Cadastral Municipality of Podujevë/Podujevo of 24 February 1988 in relation to seven different properties, among them the litigious property. The list showed as owner M.N.;
- the decision of the Municipal Court of Kušumljaja, branch in Podujevë/Podujevo, issued on 12 May 1998 – II. O.br. 36/97 – which stated that after the death of his father in 1985 the claimant had inherited 1/5 ideal part of the immovable property of his father among which was the property registered in possession list No. 17 Cadastral Municipality Surkish/Surkiš.

Both documents could be verified by the KPA. The KPA furthermore stated that the possession was lost on 10 June 1999 and that the loss was related to the conflict.

On 16 July 2007 the KPA published the claim notice.

On 8 March 2008 KPA officers went to the place where the property 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 a month. The property was occupied by S.L., who was present at the property but refused to sign a notice of participation. Nevertheless he did not claim a legal right to the claimed property. A copy of the claim was left to Mr. S.L. and B.L..

As within the 30-day period prescribed in Section 10.2 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 nobody contested the validity of the claim, the claim remained uncontested.

On 30 April 2008 the Kosovo Property Claims Commission (KPCC) rendered the cover decision KPCC/D/A/13/2008 relating to the claim, stating that *“the claimant or the property right holder, as the case may be, has established ownership over the claimed property, or such part thereof as specified in the respective individual decisions”*.

On 21 November 2008 the KPCC identified the claimed property stating that: *“(a) The claimant(s) as detailed above has/have established that K. M.N. is the owner of 1/5 of the claimed property: and ordered that: (b) K.N.M. [annotation of the panel: that is the claimant] is entitled to possession of the said property [...]”*. The KPCC added that *“In cases in which there is more than one owner to the claimed property, the above decision and order do not affect the rights of any respective co/owners”*.

On 17 April 2009 the decision was delivered to the wife of S.L..

On 22 April 2009 S.L., identified by his identity card which he displayed to the employee of the KPA and which indicated that he was indeed S.L., submitted a statement to the KPA using the name “S. S.”. He stated that he had a small part in the litigious property as had 14 other families as well and that he was willing to make a fair agreement with them. He alleged that about 100 years ago his grandfather, under duress from Serbia, had to sell the property. He gave no reason why he did not take part in the proceedings before the Commission.

Legal Reasoning:

- I. The appeal is impermissible.

The statement from 22 April 2009 has to be interpreted as an appeal against the KPCCs decision of 30 April 2007 as far as it relates to the litigious property.

However S.L. is not entitled to submit an appeal. An appeal against a decision of the KPCC may be submitted by a party to the proceedings before the KPCC (Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079).

S.L. cannot be considered a party. A party to the claim and the related proceedings is “*any person other than the claimant who is currently exercising or purporting to have rights to the property which is the subject of the claim and/or any other person who may have a legal interest in the claimed property [...], provided that such person informs the Executive Secretariat of his or her intention to participate in the administrative proceedings within thirty (30) days of being notified of the claim by the Executive Secretariat in accordance with Section 10.1*” (Section 10.2 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, emphasis added).

S.L. was notified according to the law yet did not inform the Executive Secretariat of his intention to take part in the proceedings. According to Section 10.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 the Executive Secretariat “*shall notify and send a copy of the claim*” to any person who is exercising rights to the property which is the subject of the claim. S.L. was notified of the claim in accordance with this regulation on 8 March 2008, when KPA officers visited the litigious property, put a sign on the property telling of the claim and left him and B.L. a copy of the claim. S.L. however did not claim a legal right to the property within the 30-day period prescribed in Section 10.2 UNMIK Regulation 2006/50 as amended by Law No. 03/L-079. In consequence he did not become a party to the claim and the related proceedings.

That he is referred to as the “respondent” in the notification report and that he has been delivered the KPCCs decision does not change this legal estimation.

Accordingly, not being a “party” S.L. is not entitled to submit an appeal against the decision of the KPCC.

In addition it should be mentioned that Section 10.3 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 “*A person with a legal interest in a claim who did not receive notification of a claim may be admitted as a party at any point in the proceedings*” does not apply. S.L. has received notification of the claim as has already been stated.

- II. But even if the court had considered the statement a valid appeal, it should have been rejected as unfounded for the following reasons:

The argumentation of S.L. cannot be considered. Section 12.11 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 prescribes that new facts and material evidence presented by any party to the appeal shall not be accepted and considered by the Supreme Court unless it is demonstrated that such facts and evidence could not reasonably have been known by the party concerned. Here S.L. was aware of the proceedings before the KPA since 8 March 2008 when the KPA officers visited the property and delivered a copy of the claim to him. Yet he did not take part in the proceedings but just waited until the decision of the KPCC was delivered on 17 April 2009. He has not stated any reason why he has not submitted his reasoning against the claim already during the proceedings before the KPCC. Also the court cannot see any reason why he should not have brought up his arguments in these proceedings as the alleged facts already must have been known to him.

Based on the above considerations and in accordance with Sections 12.3 and 13 of UNMIK Regulation 2006/50 as amended by Law 03/L-079, the KPA Appeals Panel decides as in the enacting clause of this judgment.

Court fees:

Pursuant to Annex III, Section 8.4 of Administrative Direction (AD) 2007/5 as amended by Law No. 03/L-079, the parties are exempted 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
- half court fee tariff for the issuance of the judgment (Sections 10.15, 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 between € 5.001 and € 10.000: € 25.

These court fees are to be borne by the appellant that loses the case. The deadline for the payment is prescribed in Article 45 Paragraph 1 of the Law on Court Fees (Official Gazette of the SAPK-3 October 1987).

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.

Signed by: Antoinette Lepeltier-Durel, EULEX Presiding Judge

Signed by: Anne Kerber, EULEX Judge

Signed by: Sylejman Nuredini, Judge

Signed by: Urs Nufer, EULEX Registrar