

**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-104/12

**Prishtinë/Priština,
17 July 2013**

In the proceeding of

T. P.

Claimant/Appellant

vs.

M. Z.

Respondent/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Elka Filcheva-Ermenkova, Presiding Judge, Esma Erterzi and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/R/145/2012 (case file registered at the KPA under No. KPA08306) dated 29 February 2012, after deliberation held on 17 July 2013, issues the following:

JUDGMENT

1. The decision of the Kosovo Property Claims Commission KPCC/D/R/145/2012 of 29 February 2012 (the case file registered at the KPA under No. KPA 08306) is annulled and the claim for private property is dismissed because of the lack of jurisdiction.
2. The appellant has to pay the costs of the proceedings which are determined in the amount of € 60 (sixty) within 90 (ninety) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 29 December 2006, T. P. filed a claim with the Kosovo Property Agency (KPA) seeking confirmation of his property right and repossession over a cadastral parcel no.1754 situated in the place called “Gegë Mahala“, ground floor house, buildings and yard with a surface of 187 m², Cadastral Zone Rahovicë/Rahovica, Municipality of Ferizaj/Uroševac. The possession over this immovability was lost on 20 June 1999 as a result of the circumstances in Kosovo during 1998/1999.

To support his claim, the claimant provided the KPA with the following written evidence:

- Possession List no.112, issued on 25 December 1995 by the Republic of Serbia, which confirms that the claimant is the owner of the claimed property in the Municipality of Ferizaj/Uroševac, Cadastral Rahovicë/Rahovica;
- Identification card no. L4341, issued on 3 August 2004, by the Municipality of Shtërpçë/Štrpce;
- A considerable number of other documents which are not related to this specific claim.

In 2008 the KPA has notified the claim by putting a notification sign on the place where the claimed property allegedly was situated. In 2010, the KPA again notified the claim, this time by announcing the claim in the Notification Gazette No. 3 and the UNHCR Property Office Bulletin. The Gazette and the List were left with a “Besarti” shop owner in Rahovicë/Rahovica who accepted to make it available for interested parties. The same publications (List and Gazette) are also placed in entrance and exit of village Rahovicë/Rahovica as well as in the several official offices in Ferizaj/Uroševac.

On 6 January 2011 the KPA has checked notification of the claimed property and found that the first notification done on 8 August 2008 was incorrect and pictures taken during the notifications on this date show different state of claimed property. After the field visit of the claimed property the state of property showed backyard and stable which were used by M. Z. who pretends a legal right.

To support his allegations, the respondent M. Z. provided the KPA with the following documents:

- Certificate of Immovable Property Rights UL-72217072-00122 dated 15 July 2011 of Cadastral Zone Rahovicë/Rahovica, Ferizaj/Uroševac Municipality, which shows that the cadastral parcel 1754 in the place called “Lagja e Gegëve” with a surface of 0.06.82 ha, is registered under the name of the respondent;
- Possession List 122, issued on 6 December 2007 by the Department for Cadastre, Geodesy and Property of the Municipality of Ferizaj/Uroševac, which shows that the cadastral parcel 1754 in the place called “Lagja e Gegëve”, Cadastral Zone Rahovicë/Rahovica, Ferizaj/Uroševac Municipality, house and yard with a surface of 0.06.82 ha, is registered under the name of the respondent;
- Possession List 112, issued on 28 February 2007 by the Department for Cadastre, Geodesy and Property of the Municipality of Ferizaj/Uroševac, which shows that the cadastral parcel 1754 in the place called “Lagja e Gegëve”, Cadastral Zone Rahovicë/Rahovica, Ferizaj/Uroševac Municipality, house and yard with a surface of 0.06.82 ha, is not listed/registered amongst the other properties under the name of the claimant.

The KPA verification team has positively verified these documents apart from the possession list no.112 related to the cadastral parcel that is subject of the claim.

On 3 October 2011 the appellant submitted within the KPA written reply on respondent’s allegation- he stated, as following:

“[.....] it is possible that respondent got confused while identifying the parcels. He is owner of parcel no. 1754 in surface of 682 m², registered in PL no. 122, CZ Rahovica. [.....] I assume that it has come to confusion due to the parcel numbers being the same (1754). In possession list no. 112, CZ Rahovica, there is a mark D besides my parcel number 1754, which means which this is a dual parcel. Parcels are identical in number, but the surface is different (surface of my parcel is 187 m², and surface of respondent’s parcel is 682 m²) and are registered in different possession lists (mine in PL no. 112, respondent’s in PL no. 122). [.....].

Based on aforementioned, I request that Kosovo Property Agency finally recognizes my rights on parcel no. 1754/D in surface of 187 m², registered in PL 112, CZ Rahovica, Uroševac Municipality”

In its decision KPCC/D/R/145/2012 dated 29 December 2012, the KPCC rejected the claim with the reasoning that the claimant has failed to present legally valid evidence and facts for the confirmation of his right over the property which is subject of his claim. The possession list he provided does not refer to the claimed property.

Possession list and the certificate on the rights of the immovable property provided by the respondent confirm his property right over the immovability which is subject. Moreover, the respondent alleges that he inherited this property from his father from 1941. These documents have been positively verified by the KPA Executive Secretariat.

On 11 July 2012 the KPCC decision was served on the claimant.

On 18 June 2012 the respondent received the KPCC decision and he did not file any reply to the appeal.

The appellant challenges the KPCC decision and alleges that the decision is based on erroneous and incomplete determination of the factual situation and misapplication of the substantive law and proposes that by granting his appeal as founded the property right is confirmed and the claimed immovability is returned under his possession. In addition, the appellant does not dispute the fact that cadastral parcel 1754 in the place called “Lagja e Gegëve”, Cadastral Zone Rahovicë/Rahovica, house and yard with a surface of 0.06.82 ha registered in the Possession List 122, and in Certificate of the Immovable Property Rights UL-72217072-00122 issued on 15 July 2011 by the Cadastral Office of Ferizaj/Uroševac, is registered under the name of the respondent. Nevertheless, he alleges that he is the owner of parcel 1754/D registered in the possession list 112.

Legal reasoning:

The appeal is admissible as it has been filed within the legal deadline of 30 days from the day of the receipt of the decision, pursuant to Section 12.1 of UNMIK Regulation nr. 2006/50 as amended by Law no. 03/L-079 on the resolution of claims which relate to the immovable property, including agricultural and commercial land.

The Supreme Court concludes that the KPCC appealed decision constitutes an essential violation of the provisions of Section 182 paragraph 2 subparagraphs (b) of LCP and Section 3.1 of UNMIK Regulation 2006/50 as amended by Law Nr. 03/L-079 which are violations of absolute nature for which this court is acting *ex officio*. Therefore, pursuant to this legal ground the appealed decision had to be annulled and the claim dismissed as falling outside the jurisdiction of this court and the KPCC (Section 11.4 (a) of UNMIK Regulation 2006/50 as amended by Law no. 03/L-079 and Article 198 (1) of LCP).

According to Section 3.1 of UNMIK/REG/2006/50 as amended by Law No. 03/L-079, a claimant is entitled to an order from the Commission for repossession of the property if the claimant not only proves ownership of private immovable property, but also that he or she is not now able to exercise such property rights by reason of circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.

The possession list 112 under the name of the claimant, issued on 28 February 2007 by the Department for Cadastre, Geodesy and Property of the Municipality of Ferizaj/Uroševac – United Nation Mission in Kosovo (UNMIK), does not refer to parcel 1754 or 1754 D.

However, the possession list 122, issued on 6 December 2007 by the Department for Cadastre, Geodesy and Property of the Municipality of Ferizaj/Uroševac – United Nation Mission in Kosovo (UNMIK), ascertained that the cadastral parcel 1754, in the place called “Lagja e Gegëve”, house with yard with a surface of 0.06.82 ha, Cadastral Zone Rahovicë/Rahovica, is registered under the name of the respondent.

These documents have been positively verified by the KPA Verification Team.

So, the cadastral parcel 1754 or parcel 1754D on which the claimant alleges his right, has not been registered under the name of the claimant in none of the above mentioned possession lists or property right certificate.

Meanwhile, Certificate of Immovable Property Rights UL-72217072-00122 dated 15 July 2011 of Cadastral Zone Rahovicë/Rahovica, Ferizaj/Uroševac Municipality has established that the cadastral parcel 1754 in the place called “Lagja e Gegëve”, house and yard with a surface of 0.06.82 ha, is registered under the name of the respondent.

Given that the appellant on his appeal claim the confirmation of ownership over the cadastral parcel 1754/D with the surface of 187 m² registered in Possession List 112, Cadastral Zone of Rahovicë/Rahovica, Municipality of Ferizaj/Uroševac, and attached another version of the possession list no 112 issued on 09.02.2010 by the Republic of Geodesy Office, the Immovable Property Cadastral Office Strpce, Department in Uroševac, the Court ordered the Cadastral Office of Ferizaj/Uroševac to verify the appellant's allegations. With its written reply (dated 3 June 2013) the Directorate for Urbanism, Property, Cadastre, Geodesy and Environmental Protection of the Municipality of Ferizaj/Uroševac found that parcel 1754/D does not exist in the place called "Lagja e Gegëve", while parcel 1754 (house and yard with the surface 682 m²) at place called "Lagja e Gegëve", listed in certificate no. 22-4620 is recorded in the name of the respondent. (M.Z.). Even the Possession List 112, issued on 8 August 2007 by the Department for Cadastre, Geodesy and Property (UNMIK) does not show that the appellant is the owner of the parcel 1754/D.

According to the documentation provided by the parties, parcel 1754 (as the subject matter of the claim without a re-numbered version as 1754 D), in the place called "Lagja e Gegëve", Cadastral Zone Rahovicë/Rahovica, house and yard with a surface of 0.06.82 ha, is registered with the Cadastral Office in Ferizaj/Uroševac as per Certificate of Immovable Property Rights UL-72217072-00122 dated 17 February 2011. The reply of the Cadastral Office of Ferizaj/Uroševac dated 3 June 2013 shows that this original parcel is registered under the name of the Respondent Z. I. M. since 1983.

From the administered evidence and confirmed facts, it results that the claimant has not been the registered owner of the claimed immovable property (parcel 1754 not parcel 1754 D). Given that the claimant did not establish his ownership right over the claimed property before the armed conflict and did not support his allegation that he has been displaced or lost possession and that he is not able to exercise his property right because of the circumstances directly related to or resulting from the armed conflict in Kosovo between 27 February 1998 and 20 June 1999 and given the fact that the property has been registered under the name of the respondent since 1983, pursuant to the provisions from Article 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, this legal matter does not fall within the scope of KPCC jurisdiction and subsequently the Supreme Court.

In light of the above the KPCC decision in connection to the stated claim had to be annulled and claim dismissed because pursuant to the provisions of Article 198 paragraph 1 of LCP, it is outside the scope of the jurisdiction of KPCC and the Court.

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, dismissal of the claim the maximum is 30 Euro which is determined in that amount, pursuant to Article 10.15 in conjunction with Article 10.1 of AD 2008/2 of Kosovo Judicial Council on the Unification of Court fees.

These court fees are to be borne by the appellant who has filed an inadmissible claim.

Furthermore, the Claimant/Appellant was aware of this but filed the claim anyway. According to Article 46 of the Law on Court Fees, when a person with residence or domicile abroad is obliged to pay a fee, the deadline for the payment may not be less than 30 days and no longer than 90 days. The Court decides that the deadline here is 90 (ninety) days. 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 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.

Elka Filcheva-Ermenkova, EULEX Presiding Judge

Esma Erterzi, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar