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-129/12

Prishtinë/Priština,
17 April 2013

In proceedings of

Sh. Sh.

Appellant

Vs.

P. T. D

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. KPA34377), dated 23 February 2011, after deliberation held on 17 April 2013, issues the following

JUDGMENT

1- **The decision of the Kosovo Property Claims Commission KPCC/D/A/100/2011 of 23 February 2011, as far as it regards the case registered at the KPA under No. KPA34377 is annulled and the claim is dismissed as the case is not within the scope of the jurisdiction of the KPCC.**

2- **The appellee has to pay the costs of the proceedings which are determined in the amount of € 45 (forty-five) within 90 (ninety) days from the day the judgment is delivered or otherwise through compulsory execution.**

Procedural and factual background:

On 26 July 2007, P. T. D. filed a claim with the Kosovo Property Agency (KPA), seeking confirmation of her property right and repossession of a property situated in Përlepnicë/Prilepnica, Gjilan/Gnjilane, parcel No. 1350, a 2nd class garden with a surface of 10 ar and 42 m². She explained that she is the owner of this parcel and that it had been lost on 28 July 1999 as a result of the circumstances of 1998/1999 in Kosovo. The case was registered with the KPA under No. KPA34377.

The claimant provided the KPA with Possession List No. 250 of 23 July 2002 which showed that the litigious parcel was registered under the name of T. Z. D. and death certificate of the latter, from which it is established that the claimant was his wife.

In 2008 the KPA notified the claim by putting a sign on the place where the parcel allegedly was situated. In 2010, the KPA again notified of 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 shop owner in Përlepnicë/Prilepnica who accepted to make it available for interested parties. The same publications also were left at the entrance and exit of village Përlepnicë/Prilepnica as well as in several official offices in Gjilan/Gnjilane.

As nobody responded, the claim was treated as uncontested and the KPCC with its decision KPCC/D/A/100/2011 of 23 February 2011 granted the claim, deciding that the claimant has proven that the property right holder T. Z. D. was the owner of the parcel.

On 19 August 2011 the KPCC decision was served to the claimant.

On 18 October 2012, Sh. Sh.(from here on: the appellant) filed an appeal with the Supreme Court, stating that he had bought parcels 1350 and 1351 (the claimed parcel) situated in Përlepnicë/Prilepnica in 1980 from his Serb neighbour D.T. *(most probably T. is a nickname of T.).* He explained that in the presence of the witnesses A. Sh. and O. Sh. he paid to D. T. - claimant's uncle the amount of 15.000,00 Dinar. Furthermore, he stated that in the same time they concluded a private contract which was signed by him, two witnesses and D. T. The contract burned with the house during the war. Parcels 1350 and 1351 (claimed parcel) have been used by him since 1980 without any hindrance and he still possesses them. Finally, he stated that the KPCC decision is wrong because the decision is issued on the basis of lack of documents, and requested from the Supreme Court of Kosovo to take into consideration his statement by treating the case in the right manner.

He provided the documents from a law suit submitted in front of the Municipal Court of Gjilan/Gnjilane on 18 October 2012, cadastral photo plan and statement dated 18 October 2012.

The appeal was served to the claimant's (from here on: the appellee) daughter.

On 20 February 2013 the Court issued an order to the appellee asking her to respond to the assertions that the property was purchased by the appellant in 1980.

The order was served to the claimant on 13 March 2013.

Following that, through the UNCHR office in Belgrade, the Court received a request from the claimant with the acknowledgement that the property is sold and she wants the case to be closed.

Same was confirmed by her daughter V. D. who was earlier authorized to represent her mother in the restitution procedure - general authorization (power of attorney), given by the claimant on 19 August 2011. Mrs D. acknowledged in front of the Executive Secretariat that the property was sold.

Legal reasoning:

The appeal is admissible although the appellant has not been a party in the proceedings before the KPCC. This circumstance cannot go to the detriment of the appellant as indeed he had not been correctly notified of the claim. The notification was done by publication of the claim in the Notification Gazette of the KPA and the UNHCR Bulletin. This, however, constitutes "reasonable efforts" to notify of the claim as required by section 10.1 of the regulation only in exceptional cases. Such an exception cannot be found in this case. As the Court cannot exclude that the appellant was not aware of the claim, he has to be accepted as a party to the proceedings, his appeal is admissible.

In her reply to the appeal the appellee declared that the property was sold, same was confirmed by her daughter, who is her legal representative, who acknowledged that the property had been sold to the appellant.

This statement has to be considered as a withdrawal of the claim (Art. 149 of the Law on Contested Procedure) which is possible not only before the KPCC but also in the proceedings before the KPA Appeals Panel (Art.193 of the Law on Contested Procedure).

After a withdrawal of the claim, the court without conducting any further proceedings will render a judgment rejecting the claim which the claimant has withdrawn. This, however, has as precondition the general rule that the case is within the jurisdiction of the court. Yet the case here is not in the scope of the jurisdiction of the KPCC/KPA Appeals Panel.

Although the KPCC as a quasi-judicial body by deciding on the merits of the claim already has accepted its jurisdiction, the Court *ex officio* assesses whether the case falls within the scope of its jurisdiction (Art. 195.1 b) of the Law on Contested Procedure).

Therefore the decision of the KPCC insofar as it has been appealed had to be annulled and the claim dismissed (Section 11.4 (a) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079), not rejected.

According to Section 3.1 of UNMIK Regulation 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 a right to the 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.

In this case, however, the appellee admits that the parcel had been sold to the respondent and it is not disputed that this happened long before the armed conflict of 1998/1999.

Therefore, the loss of the property is not related to the armed conflict of 1998/1999 in Kosovo.

As a consequence the decision of the KPCC regarding the claim had to be annulled and the claim dismissed as being without the jurisdiction of the 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, as the value of the litigious parcel can be estimated at less than € 1.000 (10.21, 10.15 and 10.1 of AD 2008/2): € 15.

These court fees are to be borne by the appellee who filed an inadmissible claim, in addition the claimant/appellee was aware of that but regardless she filed the claim. 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.

Anne Kerber, EULEX Presiding Judge **Sylejman Nuredini, Judge**

Elka Filcheva-Ermenkova, EULEX Judge **Urs Nufer, EULEX Registrar**