

**SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA**

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I PËR APELIT TË AKP-së
ŽALBENO VEĆE KAI**

GSK-KPA-A-075/12

Prishtinë/Priština, 15 May 2013

In the proceedings of:

I. M.

Appellant

vs.

S. P.R.

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/112/2011 (case file registered at the KPA under number KPA33479), dated 22 June 2011, after deliberation held on 15 May 2013, issues the following

JUDGMENT

- 1- The appeal of I. M. against the decision of the Kosovo Property Claims Commission KPCC/D/A/112/2011, dated 22 June 2011, as far as it regards the claim registered at the KPA under No. KPA33479 is dismissed as impermissible.
- 2- Costs of the proceedings determined in the amount of € 60 (€ sixty) are to be borne by the appellant and have 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 30 March 2007, S. P. R. in his position as a family household member filed a claim with the Kosovo Property Agency (KPA), seeking recognition of ownership and repossession. He explained that his late father P. S. R. had been the owner of a property located in Gornji Svracak, Vushtrri/Vučitrn, parcel No. 3381, a 3rd class field with a surface of 91 ar and 99 m². The claimant stated that the parcel was lost on 10 June 1999 as a result of the circumstances in 1998/1999 in Kosovo. The claim was registered at the KPA under the number KPA33479.

The KPA notified of the claim by publishing it in the KPA Notification Gazette No. 5 and the UNHCR property office bulletin. Both publications were distributed amongst different public agencies and in Vushtrri/Vučitrn. As nobody responded, the KPA processed the case as uncontested.

On 22 June 2011, the Kosovo Property Claims Commission with its Decision KPCC/D/A/112/2011 granted the claim as the claimant had established that P. S. R. was the owner of the claimed property.

On 1 June 2012, I. M. (the appellant) filed an appeal with the Supreme Court, stating that the KPCC's decision involved a fundamental error or serious misapplication of the applicable material or procedural law. He explained that he had not been aware of the claim and only was informed of it on 31 May 2012 by the KPA. Also the person to whom he had sold the parcel had not been notified of

the claim. He alleged that he had bought the parcel in 2001 and that he had sold the parcel to G. G. with the contract Nr. 1385/2003. To sustain his allegations he provided the Supreme Court amongst others with a copy of the sales contract Vr. Nr. 326/2001 with which he allegedly had bought the parcel from S. R. and other members of the R. family (the Court notes that the copy is that of only a part of the contract, that the copy in most of its parts is illegible and that the signatures of the sellers are illegible because of a big stain) and a copy of the certification of the contract at the Municipal Court of Vushtrri/Vučitrn (this copy also is of a very bad quality and almost not legible, the Court notes that the copy contains several signatures which are illegible because of a stain which seems similar to the stain on the copy of the contract). The appellant furthermore submitted a certified contract (Vr.nr. 385/2003, Municipal Court of Vushtrri/Vučitrn on 12 December 2003) with which he had sold parcel No. 4381 to G. G.

The claimant (from here on: the appellee) did not reply.

Legal reasoning:

The appeal is impermissible.

The appellant does not have a legal interest to file the appeal.

According to Article 2.4 of Law No. 03/L-006 On Contested Procedure, applicable in the proceedings before the KPA Appeals Panel of the Supreme Court of Kosovo according to Section 13.5 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, a “*party must have a legal interest in the claim and other procedural actions that may be taken in the proceedings*”.

This means, that an appeal may be filed only by a person who has a legal interest in the matter, just a material interest does not suffice.

The appellant, however, does not have such legal interest. According to his own statements, he has no legal connection to the litigious parcel any more as he sold this parcel already in 2003 to G. G.. The possibility that G. G. could request damages from the appellant in case the transfer of the property was invalid does not constitute legal interest but only a material interest.

The appeal therefore had to be dismissed as impermissible (Section 13.3 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079; Articles 195.1 a) and 196 read in context with Article 186.3 of the Law On Contested Procedure).

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, 10.15 and 10.1 of AD 2008/2) considering that the value of the litigious property could be reasonably estimated as being € 45.000: € 30.

These court fees are to be borne by the appellant who loses the case. According to Article 45.1 of the Law on Court Fees the deadline for fees' payment is 15 (fifteen) 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 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