

**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-217/11

Prishtinë/Priština, 8 May 2012

In the proceedings of

B.S.

Claimant/Appellant

vs

S.K.

Respondent/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/R/116/2011 (case file registered at the KPA under the number KPA 01096), dated 22 June 2011, after deliberation held on 8 May 2012, issues the following

JUDGMENT

- 1- The appeal of B.S. against the decisions of the Kosovo Property Claims Commission KPCC/D/R/116/2011 regarding case file registered at the KPA under the number KPA 01096, is rejected as unfounded.
- 2- The decision of KPCC/D/R/116/2011 regarding case file registered at the KPA under the number KPA 01096 is confirmed.
- 3- The appellant has to pay the costs of the proceedings which are determined in the amount of € 90 (€ ninety) within 15 (fifteen) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 28 Aug 2007 B.S. (the claimant) filed a claim with the Kosovo property Agency (KPA) seeking repossession over a type of property described as “apartment” of “8 square meters”, situated in Dardania, block no 1, flat 4, Pristinë/Priština, Santeja. The claimant declared that “the occupied space is part of his private property of which he presented valid documents and contract no 1193/153568”. Therefore he requested the KPA that “his property should be vacated and he be given repossession”.

To support his claim Mr S. presented to the KPA a contract on the purchase of immovable property, concluded in Pristina on 29 March 2005. According to it V.F. sold to B.S. (the claimant) an immovable property described as: “two rooms apartment, situated in Pristina, Dardania bloc 1, Lam. 5, apartment no 16 in total surface of 57, 88 square meters”.

The claimant has indicated S.K. as the occupant of the property – the disputed 8 square meters.

The KPA processed the notification by putting a poster on the wall on 26 Mar 2008. In its report from the same date, the KPA noted that the property is a storage place and is occupied by E.K. who was present at the property at the notification and who claimed legal right to it.

With cover decision No KPCC/D/R/116/2011, dated 22 June 2011, regarding claim 01096 the KPCC has decided that the claim falls outside the mandate of the Commission as set out in section 3.1 of UNMIK/REG/2006/50 as amended by Law No 03/L-079. The Commission noted that the claimant has purchased the property in 2005; that the disputed part presents a common space used by all residents

of the building, that it was converted into storage place by the respondent. According to the latter the conversion took place in 1995, but the claimant considers that the conversion took place in 1999. The Commission considered this data irrelevant because the claimant has purchased his property in 2005, therefore the alleged loss of possession could not be related to the 1998-1999 armed conflict. Thus the claim falls outside the jurisdiction of the KPA.

The claimant was notified of the decision on 04 Nov 2011.

On 02 Dec 2011 he has filed an appeal with the Supreme Court against the aforementioned decision.

The appellant B.S. accepts the fact that he has bought the property in 2005, but he claims that the property was in possession of the first owner (the one from whom he has purchased the property) only until July 1999. In this regard he refers to the statement of V.F., dated 12 Nov 2008, applied to the appeal. After July 1999 the property was illegally occupied. Therefore, the appellant considers that the loss of property came as a result of the armed conflict of 1998-1999 and in this regard the KPCC has erroneously established this fact.

Legal Reasoning:

The appeal is admissible. It has been filed within the period of 30 days prescribed in Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079.

However, the appeal is ungrounded. The decision of the KPCC is correct, the case is not within the jurisdiction of the KPCC.

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 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.

According to section 2.1 of UNMIK/DIR/2007/5 as amended by Law No. 03/L-079 “any person who **had** an ownership right, lawful possession of or any lawful right of use of or to private immovable property, who at the time of filing the claim is not able to exercise his/her rights due to circumstances directly related to or resulting from the armed conflict of 1998/1999 is entitled to reinstatement as the property right holder in his/her property right”.

The grammatical interpretation (the use of the past form of the verb have, i.e. “had”) and the historical interpretation (the socio-historical context in which the regulation was created – to ensure restitution of rights that existed by the time of the conflict) of this article, both show that the legislator did not mean to create a law that serves the resolution of any kind of property dispute, but only to create a legal instrument for restitution of property rights of persons **who had them by the time the armed conflict of 1998/1999 erupted**. Therefore any property right, acquired post factum, after the armed conflict has erupted should be dealt with by the regular civil procedure mechanisms and within the system of the regular civil courts.

The claimant himself accepts that he has purchased his apartment in 2005. Therefore he cannot claim loss of any “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”.

As the claim is out of the jurisdiction of the KPCC, the Commission had not to decide on the ownership of the appellant.

Following the same line, because of the lack of jurisdiction, the Court has not to decide whether the appellant is the owner of the claimed property or not.

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 and 10.1 of AD 2008/2), considering that the value of the property at hand could be reasonably estimated as being comprised at € 2.000: € 60 (€ 50 + (0,5% of € 2000)).

These court fees are to be borne by the appellant who should pay them within 15 days from the day the judgment is delivered to him.

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