

**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-017/12

**Prishtinë/Priština,
19 February 2012**

In the proceedings of:

D.T

Claimant/Appellant

vs.

M.M

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/120/2011 (case file registered at the KPA under No. KPA01081), dated 07 September 2011, after deliberation held on 19 February 2012, issues the following

JUDGMENT

- 1- The appeal of D.T is rejected as unfounded.
- 2- The decision of the Kosovo Property Claims Commission KPCC/D/A/120/2011 dated 07 September 2012 as far as it regards the case registered under no. KPA01081 is confirmed.
- 3- The appellant has to pay the costs of the proceedings which are determined in the amount of € 80 (eighty euro) within 15 (fifteen) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 16 August 2007, D.T on behalf of his mother K.S in the capacity of property right holder filed a claim with the Kosovo Property Agency (KPA), seeking to be recognized as the owner of the immovable property located in Gjilan/Gnjilane “Marshal Tito” Street 53, parcel no. 3802, with a surface of 101 m². Meanwhile, he explained that the respondent occupied only a part of this parcel with a surface of 32 m². He was seeking repossession of the property and compensation for the destroyed house. He explained that his mother K.S was the owner of the parcel where a house was built, that he lost them on 1 January 1999 and that the loss came as a result of the circumstances of 1998/1999 in Kosovo.

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

- Birth Certificate issued by the Municipality of Vranje, Republic of Serbia on 17 December 2003 in the name of D.T, which establishes that K.S was his mother;
- UNMIK ID Card issued on 09 October 2001 in the name of K.S;
- Letter of Notification by Municipality of Gjilan/Gnjilane, dated 22 October 1997, in the name of D.T;
- Certificate of ownership rights over the immovable property UL -70403013-01406, dated 19 March 2010 issued by Cadastral Office of Gjilan/Gnjilane, showing that the cadastral parcel 3802 of Cadastral Zone of Gjilan/Gnjilane in “Maršal Tito” street, with a surface of 269 m² is registered in the name of K.S;

This evidence – documents have been positively verified.

The claimant provided a wide range of other documents, but they are not related to his claim.

Due to the fact that the first notification of 04 August 2008 was done wrongly, a re-notification was done on 30 April 2010 and M.M appeared as a respondent, claiming the ownership right over the property being subject of this claim. On behalf of his father, the notification of respondent was signed by his son SH.M, and the latter is represented by I.M, lawyer from Gjilan/Gnjilane.

To support his allegations, he provided the following evidence:

- The claim filed with the Municipal Court of Gjilan/Gnjilane C.nr.532/05 dated 19 October 2005, whereby he claims the contested part of 32m² of the contested parcel,
- The Municipal Court of Gjilan/Gnjilane Ruling C.nr 532/05, dated 07 April 2010, whereby an interim measure was imposed to ban expropriation and registration of this cadastral parcel in the cadastral record of competent authorities until the judicial dispute is resolved.

These documents have been positively verified.

The respondent provided other evidence, but they are not relevant for this legal case.

With decision KPCC/D/C/120/2011 dated 07 September 2011, the claim of D.T in the capacity of the claimant was dismissed on grounds that pursuant to Section 18 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, the Commission has no jurisdiction to decide on this legal case, because the court proceedings regarding the claimed property was initiated in 2005. According to this legal provision it is provided that the KPCC jurisdiction is exempted if the court proceeding in relation to the claim is initiated before 16 October 2006, when this Regulation entered into force.

The KPCC decision was served to the claimant on 05 December 2011. He filed an appeal against such decision on 19 December 2011, within the deadline set forth under provisions of Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079.

The KPCC decision was served to the respondent on 7 December 2011. On 27 January 2012 the filed appeal by the appellant/claimant was served to appellee/respondent on 27 January 2012. He replied on such appeal on 3 February 2012.

The claimant/appellant mainly repeated in the appeal his allegations presented in the claim, stating that he is in possession of sufficient documents, that his mother is the owner of the claimed properties, adding also that based on the inheritance he is also the owner of the claimed property. Furthermore, he claimed compensation of damage for the destroyed house in the amount of € 300.000. He stated that the Municipal Court of Gjilan/Gnjilane with its ruling C.nr.523/05 dated 07 September 2011 found that the claim of the claimant SH.K filed against the respondent K.S was withdrawn.

On 27 January 2012, responding to the appeal, the respondent/appellee stated that the dispute according to the claimant's claim C.nr. 532/05 is on-going before the Municipal Court of Gjilan/Gnjilane, given that according to the ruling under the same acting number dated 07 November 2012, the lawsuit returned to the status quo ante following the claimant's petition. He added a copy of the ruling.

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.

The Supreme Court of Kosovo, taking for granted such situation of the case, found that the appealed KPCC decision was issued in full and fair determination of the factual situation and on such ground both the material and procedural law was properly applied; therefore, the appeal is rejected as unfounded.

According to Section 18 UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, KPCC jurisdiction is excluded if the court proceedings in relation to the claim had been initiated before 16 October 2006, when this Regulation entered into force. Given that the court proceedings regarding the claimed property were initiated by the respondent filing a claim before the Municipal Court of Gjilan/Gnjilane under C.nr.523/05 on 04 November 2005, according to the assessment of this Court the appealed KPCC decision is fair and legal when it concludes that the claim has to be dismissed because of the lack of jurisdiction of this Commission. Therefore, further proceedings regarding the claimed property fall within the jurisdiction of the Municipal Court of Gjilan/Gnjilane.

Subject of Supreme Court's consideration and assessment were the allegations of the claimant/appellant who mainly repeated the allegations presented in the claim, stating that he is in possession of sufficient documents, that his mother is the owner of the claimed properties, by adding also that based on the inheritance he is the owner of the claimed property. Furthermore, he claimed compensation of damage for the destroyed house in the amount of € 300.000. Subject of the Court was also the Gjilan/Gnjilane ruling C.nr.523/05 dated 7 September 2001, by which it is determined that the lawsuit of the claimant SH.M filed against respondent

K.S, is withdrawn. Finally, the Supreme Court found out that the allegations of appellant are ungrounded, unaccepted, contradictory and unlawful. This is for the reason that the claim of the claimant, which has objective (same parcel) and subjective identity (same families) with the claim which was filed with the Municipal Court of Gjilan under me C.nr.523/05 on 04 November 2005. Furthermore, the same court with its ruling C.nr.523/05 dated 20 January 2012, abrogated the ruling dated 7 November 2012, by which it determined that the claimant's claim (SH.M) filed against the respondent K.S was withdrawn. Therefore, based on this, the further procedure should be developed on the basis of the claim before the Municipal Court.

On the other hand, according to Section 18 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, KPCC jurisdiction is excluded if the court proceeding in relation to the claim is initiated before 16 October 2006, when the Regulation 2006/50 entered into force. Therefore, in the case at stake, the claim is dismissed as a procedural decision in absence of jurisdiction and consequently it was not decided on the merits of decision referred to by the subject of the claim. The KPCC decision is also fair and lawful when it decided to reject the claim of damage compensation, because pursuant to Section 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, the Commission has no jurisdiction to decide about it. In the light of foregoing, the Supreme Court concludes that the KPCC decision is fair and legal and the same has given sufficient explanations and clarifications as to decisive facts for such decision. The appealed decision does not contain essential violations of material and procedural law pursuant to Section 12.3 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079.

Consequently, the appellant's appeal is rejected as unfounded and the appealed KPCC decision is confirmed as fair and lawful pursuant to Section 13.3 (c) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079.

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 € 10.000 = € 50,00.

These court fees are to be borne by the appellant who loses the case. According to Article 45 Paragraph 1 of the Law on Court Fees, the deadline for fees' payment is 15 days. Article 47 Paragraph 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

Elka Filcheva-Ermenkova, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar