

**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-001/12

Prishtinë/Priština, 8 May 2012

In the proceedings of

L.F.

Respondent/Appellant

vs

N. (S.) J.

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/114/2011, regarding case file registered at the KPA under the number KPA16008, dated 22 June 2011, after deliberation held on 8 May 2012 issues the following

JUDGMENT

1- The appeal of L.F. against the decisions of the Kosovo Property Claims Commission KPCC/D/A/114/2011 (regarding case file registered at the KPA under the number KPA16008, dated 22 June 2011, is dismissed as belated.

2- The costs of the proceedings determined in the amount of € 530 (five hundred and thirty) are to be borne by the appellant, L.F., and 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 23 August 2006, N.S.J., acting as a family household member of L.-S. S. J., filed a claim with the Kosovo Property Agency (KPA) in regard to the following property:

- parcel number 748/1, cadastral zone Sofali/Sofalija, municipality of Prishtinë/Priština, with the surface of the parcel of 18 acres and 41 square meters.

The claimant stated that she was the daughter of the deceased property owner and that the property was lost on 12 June 1999 as a result of the circumstances in 1998/99. She claimed that the property is usurped by an unknown person and requested repossession.

To support her claim she provided the KPA with the following documents:

- Possession List no. 361, issued on 24 June 1997 by the Cadastral office of Republic of Serbia,
- gift contract from 3 June 1980, concluded between the mother of the claimant and herself, with which the first has donated to the second the claimed property,
- copy of cadastral plan, dated 27 July 2006,
- taxation records, etc.

On 20 July 2007 the KPA went to the alleged parcel and have established that at the time of the visit on the parcel there was a newly constructed building. They noted that the property is occupied by L.F. – respondent to the claim, who was present at the time of the visit and claimed a legal right to the property. The respondent claimed that he has bought the disputed property from the family of the claimant in 1999/2000, but he did not present any evidence in support of this statement.

On 22 June 2011, the KPCC with its decision KPCC/D/A/114/2011 (regarding case file registered at the KPA under the number KPA16008) decided that the claim of N.S.J. was grounded, i.e. that she is the owner of the claimed property and ordered the respondent to vacate it.

The KPA has reasoned that the claimant has successfully proved her ownership right. The KPA accepted “that the respondent was aware when occupying the claimed property that the property did not belong to him, and that he had no permission to use the property. The respondent therefore must also have understood that the erection of a residential property on the property was unlawful and that he therefore has no right to the claimed property”.

The respondent (henceforth: the appellant) was served with the decision KPCC/D/A/114/2011 (regarding case file registered at the KPA under the number KPA16008) on 08 November 2011. He filed an appeal 14 December 2011, stating that the decision was incorrect and erroneous.

He does not dispute that the claimant is the owner of cadastral parcel 748/1 with a surface of 18 acres and 41 square meters, but he claims that he has possessed this land since 2000 and has built 3 two-floor family houses. He refers to violations of the Law on basic property relations (Official Gazette SFRY No 6/80). The appellant claims that, “given that more than 3 years have passed by since the buildings – houses were constructed...they (the owner of the land) can only ask for the market price for the land-their parcel but not for the return of the stated land”. He also claims that the breaking down of the buildings would not be socially justified and that the owner can only ask for payment. The appellant refers to articles 2 and 5 of the Law on basic property relations but it is obvious that the numbering he proposes is wrong, because the provisions he is referring to are in article 25, paragraphs 2 and 5 of the said law.

Legal reasoning:

The appeal is belated (Art. 186.2 of Law No. 03/L-006 on Contested Procedure).

Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 provides as follows: “Within thirty (30) days of the notification to the parties by the Kosovo Property Agency of a decision of the Commission on a claim, a party may submit through the Executive Secretariat of the Kosovo Property Agency to the Supreme Court of Kosovo an appeal against such decision”.

The appellant was served with the decision on 8 November 2011. So the time limit ended on 8 December 2011. Yet the appellant filed his appeal only on 14 December 2011, which is outside the above noted time limit. He has given no excuse and the Court cannot detect any reason for the delay.

Therefore the appeal had to be dismissed as inadmissible on procedural grounds (Section 13.3 subparagraph (b) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079).

Accordingly, the Court does not have to decide whether and how the provisions of art 25, paragraphs 2 and 5 of the Law on basic property relations (Official Gazette SFRY No 6/80) are applicable in this case.

Court fees:

Pursuant to Annex III, Section 8.4 of Administrative Direction (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 the 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 € 92450: € 500 (€ 50 + 0,5% of € 92450 up to a maximum of € 500).

These court fees are to be borne by the appellant who loses the case.

According to Articles 45.1 of the Law on Court Fees, the court fee has to be paid within 15 (fifteen) days. As a consequence of non-payment within the deadline, compulsory execution including a fine as provided by Article 47 of the same law shall be ordered.

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, Presiding EULEX Judge

Elka Filcheva-Ermenkova, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar