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-76/12

Prishtinë/Priština,
17 January 2013

In the proceedings of:

E. Sh.

And

Xh. Xh.

Appellants

v.

N. P.

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 No. KPA 22024), dated 22 June 2011, after deliberation held on 17 January 2013, issues the following

JUDGMENT

1- The appeal of E. Sh.and Xh. Xh. is dismissed as impermissible due to the lack of legal interest.

2- Costs of the proceedings determined in the amount of € 60 (sixty) are to be borne by the appellants (30 € each) and have to be paid to the Kosovo Budget within 15 (fifteen) days from the day the judgment is delivered to the appellants or otherwise through compulsory execution.

Procedural and factual background:

On 11 December 2006, N. P. filed a claim with the Kosovo Property Agency (KPA), seeking repossession of a property located in Jezavo, Viti/Vitina (parcel 395/3). The claimant explained that he is a co-owner of the parcel and that an unknown person built on it storage for building materials. The claim was registered as KPA 22024.

To support his claim, he provided the KPA with Possession List no. 353, issued under the name of his father – N. D., by the Serbian Geodesic Institute (Republika Serbia, Republićki Geodetski Zavod) on 15 November 1999, a copy of the cadatral plan, regarding parcel 395/3 and other documents.

The Executive Secretariat notified potential third parties regarding the claim, by placing a notification sign in the parcel on 18 July 2008.

No one responded to the claim.

With decision KPCC/D/A/112/2011 (case file registered at the KPA under No. KPA 22024), dated 22 June 2011 the Kosovo Property Claims Commission (KPCC) accepted the claim as grounded. An individual decision followed on 19 September 2011.

On 31 May 2012 E. Sh. and Xh. Xh. filed an appeal with the Supreme Court. The appeal contains no arguments, just a statement that the decision of the KPCC involves an error due to lack of evidence. The appellants present a copy of a claim, related to case No. 63, dated 31 May 2012, filed with the Municipal

Court of Pristina. As the appeal itself contains no indication as to the incorrectness of the appealed decision, the Court accepted that the arguments have to be deducted from the presented claim, which was filed with the Municipal Court. The mentioned claim is from E. Sh. and Xh. Xh. against three persons, one of which with the name N. P. - the claimant, now appellee in the current proceedings. According to the argumentative part of the presented claim E. Sh. is the factual owner of parcel 394/0 and Xh. Xh. is the factual owner of parcel 395/2. It is claimed that those parcels have been purchased and the prices for them were paid but a final contract has never been concluded because the respondents never came to Kosovo. Further in the petitum of this claim it is required from the Municipal Court to certify that the claimant E. Sh.and Xh. Xh. have the purchasing priority of parcel 395/3, thus the respondents are obliged first to offer this land for purchase with priority to E. Sh. and Xh. Xh.

Legal reasoning:

The appeal is impermissible because of lack of legal interest of appealing the decision of the KPCC.

According to section 10.2 of the UNMIK/REG/2006/50 as amended by law No. 03/L-079, any person other than the claimant who is currently exercising or purporting to have rights to the property which is the subject of the claim shall be party to the proceedings in front of the KPA. *Per argumentum a contrario* a person with no legal interest shall not be a party.

The appellants do not claim to have legal rights towards the disputed parcel No. 395-3. They express only their willingness to buy it from the real owners (as it is obvious from the presented claim, filed with the Municipal Court). They do not dispute that the right of property belongs, among others, to the claimant, now appellee N. P. This means that they had no legal interest in taking part in the proceedings in front of the KPA (where they did not participate any way) and for the same reason they now have no legal interest to attack the contested decision of the KPCC, as it does not concern their rights at all.

The existence of legal interest is an absolute positive procedural prerequisite for the permissibility of an appeal in civil proceedings in general – art. 196 in relation to art. 186.3 of the Law on Contested Procedure, which is applicable in front of the Supreme Court in appellate proceedings against decisions of the KPA (section 12.1 of UNMIK/REG/2006/50). The law prescribes that an appeal is impermissible if the person who has filed it has no legal interest. The requirement for a legal interest stands throughout the civil proceedings and is applicable to every party – arg. after art. 2. 4 of the Law on Contested Procedure. The

Law stipulates that a party must have a legal interest in the claim and other procedural actions that may be taken in the proceedings.

As the appellants have no legal interest in the currents proceedings, their appeal stands to be dismissed.

The lack of legal interest makes it obsolete to elaborate whether the appeal is admissible /inadmissible on the ground that the appellants did not take part in the proceedings in front of the first instance – as they should have.

The appellants assert that they have paid for neighboring parcels – 394/0 and 395/2 (thus they refer to themselves as "Factual owners"). They do not even claim to have become legal owners of those lands because they were unable to conclude agreements, they obviously have an interest to "dress up" these purchases in legal form – by entering into formal written agreements, concluded in accordance with the applicable law. They probably have interest to buy the neighboring parcel- 395/3 as well, but this purely economic interest does not amount to a right to appeal a decision of the KPCC recognizing the right to the real owner, from whom they may wish to purchase the land.

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): € 30.

These court fees are to be borne by the appellants, 30 € by each appellant and have to be paid as determined for each of the appellants to the Kosovo Budget within 15 (fifteen) days from the day the judgment is delivered or otherwise through compulsory execution.

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