

**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-122/12

**Prishtinë/Priština,
19 February 2013**

In the proceedings of

N.R

Respondent/Appellant

vs

K.Z

Claimant/Appellee

represented by

M.R.V

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/144/2012 (case file registered at the KPA under the number KPA27143), dated 29 February 2012, after deliberation held on 19 February 2013, issues the following

JUDGMENT

- 1- The decision of the Kosovo Property Claims Commission KPCC/D/R/144/2012, dated 29 February 2012, as far as it regards the case registered under No. KPA27143, *ex officio* is annulled and the claim is dismissed as it does not fall within the scope of jurisdiction of the KPCC.
- 2- Costs of the proceedings determined in the amount of € 60 (sixty) are to be borne by the appellee and have to be paid to the Kosovo Budget within 90 (ninety) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 28 February 2007, M.R.V as a family household member of the property right owner filed a claim with the Kosovo Property Agency (KPA), seeking confirmation of her (now late) mother's property right to an apartment located Dimitrija Tucovica 44 [note of the Court: nowadays apparently Marin Baleti 44] in Gjakovë/Đakovica with a surface of 61 m². She stated that her mother K.Z was the owner of the apartment. This apartment was ceded to her daughter-in-law N.R. who would use it with the consent of the owner until its sale. Later on in the proceedings she provided the KPA with a power of attorney given by her mother, K.Z..

After the notification of the claim, N.R. responded, confirming the statement of the claimant insofar as according to her, the apartment was given to her 28 years ago and that since then she and her family had lived within the apartment.

With its decision KPCC/D/R/144/2012 the KPCC granted the claim of M.R.V and decided that she had established that K.M.Z is the owner of the property.

The decision was served on the respondent on 31 July 2012.

On 24 August 2012, the respondent (from here on: the appellant) filed an appeal with the Supreme Court. She challenged the decision of reason of violation of the material and procedural law and for

erroneous and incomplete determination of facts and proposed that the challenged decision be reversed.

According to her, her now late mother-in-law left Kosovo during the war. She added that she herself had lived in the flat together with her husband since 40 years and that the payment for the flat had been made by her husband, the son of K.Z.. She informed the Court that she had already in 2007 filed a claim with the Municipal Court of Gjakovë/Đakovica for confirmation of the ownership right. Besides, the appellant deems herself to be the inheritor of her mother-in-law.

The claimant (now: the appellee), represented by M.V., reacted to the appeal, proposing to reject it. She stated that K.Z. still was alive, that the appellant was not her inheritor as the appellant's husband also still was alive. She also stated that the appellant could not acquire the ownership right to the apartment by adverse possession as the appellant knew that she was not the owner. Furthermore, the evidence provided by the appellant would not give proof that the apartment was hers.

Legal Reasoning

The Court first wants to note that parties to the proceedings are N.R as the respondent/appellant and K.Z as claimant/appellee. M.V. is the representative of the claimant/appellee by the power of attorney given by K. Z. and as such not party to the claim.

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 claim could not be granted as the case is not within the scope of jurisdiction of the KPCC (Section 11.4 (a) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079). However, as the KPCC did not dismiss the claim due to the lack of jurisdiction, but decided on the merits of the case and granted the claim, this decision *ex officio* had to be annulled and the claim instead of being granted had to be dismissed.

Although the KPCC as a quasi-judicial body by deciding on the merits of the claim already has accepted its jurisdiction, the Court *ex officio* assesses whether the cases fall within the scope of its jurisdiction (Art. 195.1.b) of the Law on Contested Procedure).

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 a right to the 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.

In this case, however, there is no evidence or any indications that the loss of the property is in any connection with the armed conflict of 1998/1999. On the opposite, the appellee herself stated that she gave the apartment to the appellant for her to live in. That the appellant just stays within the apartment and now declares the apartment to be her own, although the appellee declares that the apartment is her's, is in no aspect related to the armed conflict in 1998/1999.

Cases like these are not within the scope of jurisdiction of the KPCC or the KPA Appeals Panel, they have to be adjudicated by the competent general civil courts.

Therefore the decision of the KPCC regarding the claim *ex officio* had to be annulled and the claim dismissed as being without the jurisdiction of the KPCC and the Court.

The Courts decision is without prejudice to the right of the appellee to seek confirmation of her property right before the competent local authorities.

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 property at hand could be reasonably estimated as being above € 20.000: € 30.

These court fees are to be borne by the appellee who loses the case. According to Article 46 of the Law on Court Fees, when a person with residence abroad is obliged to pay a fee, the deadline for fees' payment is not less than 30 (thirty) and no longer than 90 (ninety) days. The Court sets the deadline to 90 (ninety) 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 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