

**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-112/12

**Prishtinë/Priština,
5 March 2013**

In the proceedings of:

S. I.

Appellant

vs.

M. 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/100/2011 (case file registered at the KPA under No. KPA00773), dated 23 February 2011, after deliberation held on 5 March 2013, issues the following

JUDGMENT

- 1- The decision of the Kosovo Property Claims Commission KPCC/D/A/100/2011 of 23 February 2011, as far as it regards the case registered at the KPA under No. KPA00773, *ex officio* is annulled and the claim is dismissed as the case is not within the scope of jurisdiction of the KPCC.

- 2- The appellee has to pay the costs of the proceedings which are determined in the amount of € 45 (forty-five) within 15 (fifteen) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 26 April 2007, M. P. filed a claim with the Kosovo Property Agency (KPA), seeking confirmation of his property right and repossession of a property situated in Radishevë/Radiševo, Skenderaj/Srbica, parcel No. 1083, a 5th class field with a surface of 21 ar and 58 m² and a 6th class field with a surface of 23 ar and 97 m², in total 45 ar 55 m². He explained that he was the owner of this parcel and that it had been lost on 1 June 1999 as a result of the circumstances 1998/1999 in Kosovo. The case was registered with the KPA under No. KPA00773.

In 2009 the KPA notified of the claim by putting a sign on the place where the parcel allegedly was situated. In 2001, the KPA again notified of the claim, this time by announcing the claim in the Notification Gazette No. 7 and the UNHCR property office Bulletin. The Gazette and the List were left with a representative of the village Runik/Rudnik who accepted to make it available for interested parties. The publications also were left at the entrance and exit of Runik/Rudnik as well as in several official offices in Skenderaj/Srbica and Mitrovicë/Mitrovica.

As nobody responded, the claim was treated as uncontested and the KPCC with its decision KPCC/D/A/100/2011 of 23 February 2011 granted the claim.

On 7 September 2012, S. I. (from here on: the appellant) filed an appeal, stating that before in 1973/1974 his family had bought parcel No. 1083 from O. P. He named several witnesses.

The claimant (from here on: the appellee) responded to the appeal. He wrote the following:

“Dear neighbour I, I, P.M, son of P. O. from village R., having in mind that he is sick, in his name state:

It is true that my father sold the mentioned parcel No. 1083 with a surface of 45 ar 55 m2 to I. I.in 1974 in the presence of the witnesses mentioned in the claim.

Therefore, nothing is controversial in regard to claim KPA00773 of S. I., all stated is true”.

Legal reasoning:

The appeal is admissible although the appellant has not been a party in the proceedings before the KPCC. This circumstance cannot go to the detriment of the appellant as indeed he had not been correctly notified of the claim. The notification was done by publication of the claim in the Notification Gazette of the KPA and the UNHCR Bulletin. This, however, constitutes “reasonable efforts” to notify of the claim as required by section 10.1 of the regulation only in exceptional cases. Such an exception cannot be found in this case. As the Court cannot exclude that the appellant was not aware of the claim, he has to be accepted as a party to the proceedings, his appeal is admissible.

The decision of the KPCC insofar as it has been appealed had to be annulled *ex officio* and the claim dismissed 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).

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 case falls 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, the appellee in his reply to the appeal confirms that the appellant's statement is true and that the parcel had been sold to by his father to I. I., his neighbour.

Therefore, the loss of the property is not related to the armed conflict of 1998/1999 in Kosovo.

As a consequence 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.

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): € 15.

These court fees are to be borne by the appellee who filed an inadmissible claim. According to Article 45.1 of the Law on Court Fees, the deadline for paying the fees is 15 (fifteen) 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