

**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-5/09

Prishtinë/Priština

19 May 2011

In the proceedings of:

S.D.

Appellant

vs.

Z.S.

Claimant/ Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Antoinette Lepeltier-Durel, Presiding Judge, Anne Kerber and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/A/13/2008, (case file registered at the KPA under the number KPA36452), dated 30 April 2008, after deliberation held on 19 May 2011, issues the following

JUDGMENT

- 1- The appeal of S.D. is accepted.
- 2- The decision of the Kosovo Property Claims Commission KPCC/A/13/2008, dated 30 April 2008, only its part related to the claim filed on 7 May 2007 by Z.S. and registered under the No. KPA 36452, is quashed.

- 3- The claim filed on 7 May 2007 by Z.S. and registered under the No. KPA 36452 is dismissed.
- 4- Costs of proceedings determined in the amount of 50 Euros (fifty Euros) are to be borne by the appellee, Z.S., and to be paid to the Supreme Court within 90 days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 7 May 2007, Z.S. born D. filed a claim with the Kosovo Property Agency (KPA) seeking for repossession over the parcel of land No. 2210 located at a place called “Njivçe” Jasenovik/Jasenovik, Novobërdë/Novo Brdo, with a surface of 0 ha 16 a 65 ca, and for compensation of the use of the parcel without any permission.

She asserted that she is co-owner for 1/3 ideal part of the said property and that the parcel is occupied by an unknown person.

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

- Possession list No. 27 of cadastral zone Jasenovik/Jasenovik in the municipality of Novobërdë/Novo Brdo;
- Inheritance decision O. No. 249/89 issued by the Municipal Court of Prishtinë/Priština on 10 January 1990;
- Certificate of marriage with M. S. whose first name is illegible.

She indicated as other natural persons to the claim: S.D. and J.D..

In its notification report, the KPA noted that the litigious parcel was occupied but that, although some inhabitants of the village were asked, it could not identify the occupant who was not present. The notification of the claim was completed on 17 January 2008 but was not addressed to anybody.

The KPA processed to the notification of the claim by setting up a poster on the parcel on 4 March 2008. Since no respondent filed a reply within the deadline, the claim was considered as uncontested.

The verification report of the KPA ascertained the validity of the possession list and of the inheritance decision with the Cadastre Department and the Municipal Court of Prishtinë/Priština. Concerning the latter, it was mentioned that this decision did not bear the official stamp but that no appeal had ever been filed against it.

By its decision of 30 April 2008, the Kosovo Property Claims Commission (KPCC) decided that the claimant had established ownership of 1/3 of the claimed property and ordered that she be given possession of the said property and that any person occupying the property vacate it within 30 (thirty) days of the delivery of the decision. The KPCC dismissed the claim for compensation for physical damage or loss of use by stating that it did not fall under its jurisdiction.

The claimant received the KPCC decision on 12 February 2009 and filed a request for repossession on 19 March 2009. Later on, this decision was served on S.D., current occupant of the parcel, on 12 May 2009.

On 9 June 2009, S.D. (herein after the appellant) filed an appeal with the Supreme Court against the aforementioned decision.

In his appeal, he stated that the appealed decision contained fundamental mistake or seriously wrong application of material or procedural law and was taken on wrong or incomplete determination of the facts: he asserted that the decision was issued without having taken into consideration the lawsuit filed and still pending before the Municipal Court of Prishtinë/Priština.

In support of his appeal, he provided the Supreme Court with the claim he had filed with the Municipal Court of Prishtinë/Priština together with S.D., Z.D. and S.D. against Ž.S., S.K. and J.D., and with a chart of his family's members.

In this claim, the claimants explained that, amongst others, the litigious parcel of land was owned by the late S.D., grand-father of both the claimants and the two first respondents, father in law of the third respondent, that the grand-father had six children and that the inheritance procedure after his death had not been done. They added that the parcel was unlawfully registered in the name of one of their grand-father's children, the now late S.D., whose wife, J.D. and two daughters, Ž.S. and S.K.

had then inherited. They asked to be recognized as co-owners of the parcel as heirs of their late father J.D/, other child of their grand-father.

Answering to its request, the Municipal Court of Prishtinë/Priština provided the Supreme Court with its decision P. No. 1935/08 issued on 25 May 2010 by which the claim was rejected. This decision is related to many parcels of land and, in the Albanian version, notably to the parcel at stake in the present case although the English translation has omitted it.

An appeal was filed against this decision. The appeal proceedings are still pending before the District Court of Prishtinë/Priština.

The appellee was served with the appeal against KPCC's decision on 23 October 2009. However she did not submit any reply.

Legal reasoning:

The first instance decision was served on the appellant on 12 May 2009. According to Section 12.1 of UNMIK Regulation 2006/50 as amended by the Law No. 03/L-079 on the resolution of claims relating to private immovable property, including agricultural and commercial property, a party may submit an appeal within thirty (30) days of the notification of the decision. S.D. timely submitted his appeal on 9 June 2009.

The appellant challenges the KPCC decision for the reason that it has not taken into consideration the lawsuit brought before the alleged competent court in Prishtinë/Priština.

Implicitly, the appellant asks the Court to consider the pending proceedings before the regular courts as a prejudicial matter that should have hindered the KPCC to issue its decision.

The Supreme Court observes that the KPA unsuccessfully tried to identify the current occupant of the parcel at stake and that the lack of respondent before the KPCC, after the notification of the claim on the parcel, led it to examine an uncontested claim.

It is only at the time of the service of the KPCC decision that S.D. was identified as current occupant of the parcel and served with the KPCC decision.

Therefore, the KPCC could not be aware of the eventual existence of a prejudicial matter pending before the Municipal Court of Prishtinë/Priština.

Since with the appeal these ongoing proceedings before the regular courts are now known, the Supreme Court analyses the two parallel lawsuits. It notes that both proceedings before the KPCC and before the Municipal Court of Prishtinë/Priština are based on inheritance. On one hand, the claimant Z.S. submitted to the KPCC an inheritance decision stating that she is one of the heirs of her late father, S.D.. This inheritance decision was considered valid by the KPCC and is not directly challenged by the appellant. On the other hand, the appellant together with his brothers and sister filed a claim before the Municipal Court of Prishtinë/Priština, asking it to decide that their late father, J.D., was one of the heirs of their late grand-father, S.D., as well as the late S.D., so that the parcel at stake should not have been registered only under the name of the late S.D..

It is true that in the case the regular courts issued a final decision accepting this claim, it would affect Z.S.'s property right, at least in its extent and/or it would be contradictory to the KPCC decision.

However, the documents submitted by the appellant and the case file of the Municipal Court of Prishtinë/Priština of which copy has been sent to the Supreme Court, lead the Court to raise *ex officio* the question of the jurisdiction of the KPCC over the subject matter.

Pursuant to Article 365 of the Law on Contested Procedure (Official Gazette 4/77-1478, 36/80-1182, 69/82-1596) (applicable to these proceedings according to Article 533.1 of the Law No. 03/L-006 on Contested Procedure since this law entered into force on 5 October 2008, thus after the issuance of the KPCC decision), the court of second instance has to examine *ex officio* the substantial violations on the point of practice of procedure foreseen by Article 354 paragraph 2 of the same law. Amongst these substantial violations is comprised the lack of jurisdiction of the first instance court. (Article 354 paragraph 2, No.3 and 4)

The jurisdiction of the KPCC is set up by Section 3.1 of UNMIK Regulation No. 2006/50 as amended by the Law No.03/L-079, which reads that the KPCC has the competence to resolve “*the following categories of conflict-related claims involving circumstances directly related or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999:*

- *the ownership claims with respect to private immovable property, including agricultural and commercial property, and*
- *claims involving property use rights in respect of private immovable property, including agricultural and commercial property,*

where the claimant is not now able to exercise such property rights.”

The Supreme Court considers that the requirement “conflict-related” is not met in the present case and as a consequence that the KPCC had no jurisdiction over the subject matter.

In its claim processing report dated 7 April 2008, the KPA noted that the date of loss of possession by Z.S. was 12 June 1999 and that the current occupant of the litigious parcel was not identified.

However, the current occupant was later on identified as being Z.S.’s cousin. Moreover, the minutes of the hearing held at the Municipal Court on 20 April 2010 show that Z.S. answered to the question of the Judge that she was never disturbed by the claimants or third persons with regard to the ownership and use of the immovable property. The defense filed on 28 November 2008 by her with her mother and her sister in these proceedings and the statement of the claimants as mentioned in the decision issued by the Municipal Court on 25 May 2010 bring the evidence that a permission to use a house and to cultivate the land was given by the respondents or at least one of them to their cousin.

From those facts, it appears that the disagreement has been between opposing members of the same family for a long time and that its origin is not at all related to the armed conflict that occurred between 27 February 1998 and 20 June 1999.

The fact that Z.S. left Kosovo on 12 June 1999 does not imply necessarily that the occupation of the parcel by her cousin is related to this armed conflict.

The wording of Section 3.1 “*conflict-related claims involving circumstances directly related or resulting from the armed conflict*” implies a direct link between the dispossession and the armed conflict or a close link of cause and effect which is missing in the present case. The litigious subject matter of this case is only an inheritance issue that exists and would have probably occurred in the same way independently of the armed conflict.

This analysis is corroborated by the fact that, as soon as the inheritance issue is finally solved, the ownership right over the litigious parcel and, consequently, the repossession in case Z. S. wins, will be solved.

From all those considerations, the Supreme Court concludes that the claim filed by Z. S. with the KPCC did not fall under the jurisdiction of the KPCC. Therefore, the appealed decision cannot stand and has to be quashed. Further on, making a new decision with the modification that is required in the decision of the KPCC as provided by Article 13.3 of UNMIK Regulation 2006/50 as amended by the Law No. 03/L-079, the Supreme Court decides that the claim brought before the KPCC has to be dismissed since it does not fall under the jurisdiction of this Commission. Considering that the legal issue raised by the claim will be adjudicated through the procedure pending before the District Court of Prishtinë/Priština, there is no need to refer it to a regular court.

Costs of the proceedings:

Pursuant to Article 8.4 of Annex III of Administrative Direction (AD) 2007/5 as amended by the Law No. 03/L-079, the parties are exempted from costs of proceedings before the Executive Secretariat and the Commission.

However such exemption is not foreseen for the proceedings before the Supreme Court.

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 Supreme Court.

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 (Sections 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 between 1.001 and 2.500 €: 20 €.

These court fees are to be borne by the appellee that loses the case.

According to Article 46 of the Law on Court Fees, the deadline for fees payment by a person with residence or domicile abroad may not be less than 30 days and no longer than 90 days. The Supreme Court decides that, in the current case, the court fees shall be paid by the appellant within 90 days from the day the judgment is delivered to him.

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.

Signed by: Antoinette Lepeltier-Durel, EULEX Presiding Judge

Signed by: Anne Kerber, EULEX Judge

Signed by: Sylejman Nuredini, Judge

Signed by: Urs Nufer, Eulex Registrar