

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-2/10

Prishtinë/Priština

7 July 2011

In the proceedings of

A.J.,

Claimant/Appellant

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 decisions of the Kosovo Property Claims Commission KPCC/D/A/29/2008 (case file registered at the KPA under the number KPA01403), dated 19 December 2008, KPCC/D/A/22/2008 (case file registered under the number KPA01402), dated 28 August 2008, and KPCC/D/A/25/2008 (case file registered under the number KPA01396), dated 23 October 2008, after deliberation held on 7 July 2011, issues the following

JUDGMENT

- 1- The appeals of A.J. filed against the decisions KPCC/D/A/29/2008, dated 19 December 2008, KPCC/D/A/22/2008, dated 28 August 2008, and KPCC/D/A/25/2008, dated 23 October 2008, are dismissed as impermissible.

- 2- The Costs of proceedings determined in the amount of € 55 (fifty five) are to be borne by the appellant, A.J., and to be 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 5 December 2007, A.J. filed a claim with the Kosovo Property Agency (KPA), alleging that he was the owner of the claimed property and seeking for repossession of the following cadastral parcels: with claim no. KPA01403 he asked for repossession over the cadastral parcel 1649/8 with a surface of 0.34.00 ha, located in Bresje, Municipality of Fushë Kosovë/Kosovo Polje; with claim no. KPA01402 he asked for repossession over the cadastral parcel 1536/58 with a surface of 0.74.99 ha, located in the place called “Jagnela”, cultivated land of class 3; and with claim no. KPA01396 he asked for repossession of the cadastral parcels 2426 and 2427 in the place called “Latkovica”, culture: meadow respectively cultivated land of class 3, with a surface of 0.91.28 ha.

To support his claim, the claimant provided the KPA amongst others with the possession list 1934 dated 8 November 2007 of the Cadastral Office of Fushë Kosovë/Kosovo Polje, showing that the aforementioned cadastral parcel 1649/8 was in possession of J.A., and with the certificate UL-7251403600779 dated 18 June 2008 on immovable property rights issued by the Cadastral Office in Fushë Kosovë/Kosovo Polje, which showed as owners of the cadastral parcels 1536/58, 2426 and 2427 J. N. and J.A., each of them for ½ ideal part. The documents could be verified by the KPA.

With decision KPCC/D/A/29/2008, dated 19 December 2008, the Kosovo Property Claims Commission (KPCC) decided that the claimant A.J. was the owner of the aforementioned cadastral parcel 1649/8 and that he had the possession right over the property at hand. With decision KPCC/D/A/22/2008, dated 28 August

2008, the KPCC decided that the claimant A.J. was the owner of ½ of the aforementioned cadastral parcel 1536/58 and that he had the possession right over this property. With decision KPCC/D/A/25/2008, dated 23 October 2008, it was established that the claimant was the owner of ½ of the aforementioned cadastral parcels 2426 and 2427 and that he had the possession right over this property.

The claimant (henceforth: the appellant) received the decisions of the KPCC on 23 April 2009. On 21 May 2009 he filed an appeal against all three decisions. In case GSK-KPA-A-2/10 (KPA01403) he argued that the owner of the swimming pool “PISHINA” had dug up the watercourse and therefore the water could not drain from his land in case of rainfall. In case GSK-KPA-A-3/10 (KPA01402) he argued that the fence built on his property by the AAB University had to be removed. In case GSK-KPA-A-4/10 (KPA01396) he argued that the fence had to be removed, that a huge concrete construction blocked the road towards his land and that the water drains were blocked.

As during the proceedings of the KPA no respondent to the claim had been identified, the decision of the KPCC was not served on any person besides the appellant, the former claimant.

The Court received the appeals on 15 April 2010 and joined them.

Legal Reasoning:

The appeal of the claimant is dismissed as impermissible.

From the case file it results that the appellant had requested to establish his ownership right by repossession of the litigious parcels. The KPCC decided in his favour and confirmed the ownership right of the claimant and granted repossession (see Article 11.2 of UNMIK Regulation 2006/50 as amended by Law no. 03/L-079). With its decisions the KPCC decided entirely as the appellant had requested. According to provisions of Articles 14, 15 and 16 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, he may request from the KPA the execution of the decisions.

With the reasoning in his appeal the appellant does not provide any facts showing that the claim filed by him has not already been entirely accepted by the KPCC.

As the claims of the appellant have been entirely accepted, the appellant lacks the necessary legal interest for the submission of the appeal. According to Article 186.3 of the Law on Contested Procedure the appeal has

to be dismissed as impermissible if the person who filed the appeal has no legal interest in filing the appeal.

Furthermore with his allegations the appellant does not present any facts that show that the alleged disturbances result from circumstances which are directly linked or have evolved from the armed conflict which occurred between 27 February 1998 and 20 June 1999, as foreseen with the provisions of Article 3.1 subparagraph “a” and “b” of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079. The KPCC and the KPA Appeals Panel, however, have jurisdiction only for cases linked with this conflict. Therefore the appeal would have to be dismissed also for the lack of jurisdiction. In light of the above, given that the appellant has no judicial interest for filing the appeal at hand pursuant to Article 186 paragraph 3 of Law on Contested Procedure, it is decided as in the enacting clause of this Judgment pursuant to Article 13.3 subparagraph “b” of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079.

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 exempted 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
- half of the court fee tariff for the issuance of the judgment (Sections 10.15, 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 € 5001 and 10000: € 25.

These court fees are to be borne by the appellant who loses the case. The deadline for the payment is prescribed in Article 45. 1 of the Law on Court Fees. 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.

Antoinette Lepeltier-Durel, EULEX Presiding Judge

Anne Kerber, EULEX Judge

Sylejman Nuredini, Judge

Bekim Ahmeti, EULEX Registrar