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-148/11

Prishtinë/Priština,
29 November 2012

In the proceedings of:

S.B.,
represented by **S.B.**

Appellant/Respondent

D.M.

Appellant

vs.

R.M.

Claimant/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Anne Kerber, Presiding Judge, Elka Ermenkova and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/85/2010 (case file registered at the KPA under No. KPA 10112), dated 2 September 2010, after deliberation held on 29 November 2012, issues the following

JUDGMENT

1- The appeal of D.M. is dismissed as impermissible due to the lack of legal interest.

2- The appeal of S.B., represented by S.B. is admissible.

3- The decision of the Kosovo Property Claims Commission KPCC/D/A/85/2010 (regarding case file registered at the KPA under No. KPA 10112), dated 2 September 2010 is annulled as rendered in the absence of jurisdiction.

4- The claim of R.M. No. KPA10112, related to parcel 517 is dismissed as falling outside the jurisdiction of the KPCC.

5- Costs of the proceedings determined in the amount of € 60 (sixty, euro) are to be borne by the appellee R.M. and have 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 24 August 2006, R.M. filed a claim with the Kosovo Property Agency (KPA), seeking repossession over a property located in Lipjan/Lipljan, Halaq i Madh/Veliki Alaš, parcel no. 517, a 4th class cultivated land, with a surface of 71 ar 36 m^2. In addition he claimed compensation for unauthorized usage. The claim was registered as KPA 10112.

To support his claim, he provided the KPA with the following documents:

- Possession List no. 20 of the Municipality of Lipjan/Lipljan, cadastral zone of Hallaq i Madhë/Veliki Alaš, dated 7 February 2003, certifying that the claimed parcel was registered under the name of V.M. and J.(J.)M.;
- Death Certificate (No 203-3-1599/04-8-1674) of J.M. (date of death 10 November 1984), issued by the Municipality of Lipjan/Lipljan (Republic of Serbia) on 29 July 2004;
- ID card, issued on 2 August 1993 in Lipjan/Lipljan (Republic of Serbia);
- Death Certificate (No 203-3-1594/04-8-1673) of V.M. (date of death 10 November 1981) issued on 29 July 2004 by the Municipality of Lipjan/Lipljan (Republic of Serbia) and

- Birth Certificate of the claimant R.M., issued on 19 July 2007 by the Municipality of Lipjan/Lipljan (Republic of Serbia), certifying that J.(J.)M. and V.M. are the parents of R.M.

On 19 June 2007, KPA officers went to the parcel and put up a sign indicating that the property was subject to a claim and that interested parties should file their response within 30 days. The property was found occupied by respondent S.B. and he was present when the notification was done.

On 22 June 2009 S.B. on behalf of his father S.B. as respondent, visited the KPA office and stated that cadastral parcels 515, 520, 521 and 552 had been purchased by them from D.M., while in the disputed parcel no. 517, with the consent of the same person as property right holder they (the B. family) built a house. Furthermore, he stated that an oral agreement for immediate purchasing of the disputed property between them and the property right holder was achieved.

To support his reply, he provided the KPA with the following documents:

● Purchase Contract concluded on 10 May 2006 and verified by Municipal Court of Lipjan/Lipljan on 30 June 2006 (Vr.nr./Ov.br.. 2101/2006);
● Property Tax Certificate no. 432-2-725, issued on 15 May 2006 by Department for Budget and Finance of the Municipality of Lipjan/Lipljan;
● Tax Certificate no. 02/2-333, issued on 12 May 2006 by Directorate of Property Tax of the Municipality of Lipjan/Lipljan and
● UNMIK ID card, issued on 21 September 2004.

The KPA verified positively the Purchase Contract No. 2101/2006 dated 30 June 2006.

On 2 July 2009 the KPA served the respondent's reply to the claimant.

On 21 July 2009, the claimant provided to KPA his written reply. He asserted that the owner of parcels no. 516 and no. 517 was his deceased mother J.(J.)M.; the respondent's allegations are not true and after the decease of his mother he is the owner of these properties. He (the claimant) had never talked with the alleged buyer/respondent, he neither sold the parcels, nor does he know who the alleged buyer is. He seeks eviction of the occupant.

On 4 February 2010 the respondent (S.B.) submitted a handwritten declaration. He stated that his son on the submitted claim mistakenly declared that *"we are using parcel no.517"*. Furthermore, in his declaration he added that in fact they use parcels 516, 520, 521 and 522 and he possesses documentation regarding these parcels.

To support his declaration, he provided the following documents:

- The same documents that were submitted to the KPA by his son, namely, Possession List no. 20, Purchase Contract No. 2101/2006, Tax Certificate no. 02/2-333 and Property Tax Certificate no. 432-2-725;
- Copy of individual Account Opening and Card Agreement and
- UNMIK ID card, issued on 8 April 2009.

On 22 March 2010 the KPA Executive Secretariat contacted Mr. S.B. and asked him regarding the discrepancy between his reply on behalf of his father/respondent and declaration submitted by the respondent himself. In his answer S.B. stated that when he made the reply, he was not sure about the parcel number and he finally declared that he does not contest claimed parcel no. 517.

On 16 July 2010 the KPA contacted the respondent and asked him whether he wants to withdraw his reply as he declared that he does not claim a legal right over the claimed parcel and that he by mistake has made a reply. He stated that he wants to withdraw the reply and promised that he will visit KPA Pristina Regional Office to fill in a withdrawal form. 30 days deadline was given to him and he was told that if he does not withdraw the reply within the given deadline the claim will be processed as contested.

The respondent did not reply and he did not withdraw his allegations; therefore the Agency processed the claim as contested.

With decision KPCC/D/A/85/2010 of 2 September 2010, the Kosovo Property Claims Commission (KPCC) decided that the claimant had established that J.M. was the owner of 1/1 of the claimed property and ordered that claimant R.M. is entitled to possession of the said property, that the respondent if any, and any other person occupying the property had to vacate it within 30 (thirty) days of the delivery of the order and should the respondent or any other person fail to comply with this order to vacate the claimed property within the time period stated, they shall be evicted from the property. The KPCC dismissed the claim for compensation of loss of use for lack of jurisdiction.

The decision was served to the respondent on 15 August 2011.

On 18 August 2011, D.M. filed an appeal with the Supreme Court against the aforementioned decision of the KPCC. He considers that the decision was taken in serious misapplication of the applicable procedural or material law. In his appeal he stated that the plot, house as well as three parcels, was bought by his father and that the appellee's father V.M. sold to them 12 ar. He used to live in these properties without any interference of any person. The appellant says that he had sold the plot to S.B..

On 5 September of 2011 S.B. (representing S.B.) filed an appeal with the Supreme Court against the aforementioned decision, which, according to him, involved a fundamental error and serious misapplication of the applicable procedural or material law and was based on insufficient facts. He objects the decision, because the claimant was wrongly considered as holder of property right, while the factual owner of the contested parcel was his uncle, D.M., based on a transfer which happened 50 (fifty) years ago and the disputed parcel was used by him and not by the appellee. He also stated that the father of D.M. had raised the foundation of a family building, which was used by them until 1999 when was burned and they left the village. According to Mr B. when D.M. possessed and used the said parcel, the appellee had never contested his ownership right but he did it when he came to know that S.B. entered in contractual relationship regarding the disputed parcel no. 517, for which he still did not pay the purchase price and the same will be paid to him when D.M. will prove his ownership right over the said parcel.

Furthermore, in his appeal the appellant asserted that upon their request addressed to him, D.M. appeared in front of the KPA and gave his statement regarding the contested property. The appellant emphasizes the fact that they had contacted D.M. and had his consent to rebuild the house in the disputed parcel and after asking also other people living around and getting the answer that the property belonged to D.M., they started with building of the house, while for the other parcels the purchase contract between S.B. and D.M. was concluded. The same purchase contract was verified in the Municipal Court of Lipjan/Lipljan.

Before the conclusion of the said contract with D.M. subject matter of pre-contract discussion was also parcel no. 517, but after consultation with a lawyer this parcel was excluded from the contract.

Finally, he stated that the conflict/contest for the ownership right over the disputed parcel is between D.M. and the appellee R.M. and not between S.B. and the appellee.

The appellant requested from the Supreme Court to repeal and annul the Kosovo Property Claims Commission decision KPCC/D/A/85/2010 of 2 September 2010, and afterward based on the complete verified factual situation to decide on (non) recognition of the property right of the appellee.

On 10 January 2012 the Supreme Court issued an order and requested the appellant D.M. to inform the Court of his current address, to inform why he did not respond to the notification of the claim on 19 June 2007, to inform the Court whether the whole parcel 517 was sold to his father or only 12 ar, whether the sales contract was done in written form and whether it was certified. The appellant was also required to provide the addresses of the witnesses he wanted to be questioned.

The Court also requested from the appellee R.M. to respond to the allegation that the parcel was sold fifty years ago (ca. 1960) to the father of D.M..

The order was not served to D.M. because; according to the information provided by the KPA on 1 March 2012 he has changed his address and he no longer lived in Graçanicë/Gračanica. The Court requested the person to be contacted on the phone and his current address was established to be now in Serbia, where he was served with the order.

On 26 April 2012 the appellant D.M. responded. Regarding the notification dated 19 June 2007 he explained that he has never received any notification, therefore he did not provide any answer. He notes that his father bought only 12 of parcel 517, where they built their house and where they lived till 1999. The contract was in verbal form. In addition he describes that he has lived in this parcel for 50 years, when he was building his house R. promised that he would transfer these 12 ar in his name, but he did not. The appellant asked the claimant that they sell the whole parcel 517, which includes these 12 ar as the whole parcel was still under the name of R.'s father, but the claimant respondent that he does not want to sell his field, but that he (D.) can sell his 12 ar if he wants. They had an agreement that R. would transfer these 12 are in the name of S.B. but he did not.

On 15 June 2012 the Supreme Court issued an order and requested the appellee R.M. to respond to the assertions of D.M..

On 5 November 2012 R.M. sent a letter explaining that parcel 517 (12 ar of it) was sold by his late father V.M. to his uncle I.M., but the land was never paid for completely, there were, in the language of the appellee "only internal contracts". These contracts have never been certified by the Municipal Court. Further he asserts that he has the possession list issued by the Municipality for parcel 517. He also explains that he (R.M.) has informed the witness I.I. that he should not alienate the property that he (R.M.) possesses and that he has inherited from his father V.M..

Legal reasoning:

The appeal of D.M.:

The appeal of D.M. is impermissible because of lack of legal interest of appealing the decision of the KPCC regarding the disputed parcel. This appellant claims that he has sold this property to a third person – the appellant S.B., therefore he no longer claims that he is the owner of parcel 517 (12 ar of this parcel), but another person – the above mentioned Mr B.. This means that he, D.M. has no legal interest in attacking the contested decision of the KPCC. The existence of legal interest is an absolute positive procedural prerequisite for the permissibility of an appeal in civil proceedings –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.

Therefore this appellant has no legal interest in the current proceedings and his appeal stands to be dismissed as impermissible.

The lack of legal interest makes it obsolete to elaborate whether this appeal is admissible/inadmissible on the ground that D.M. did not take part in the proceedings in front of the first instance.

The appeal of S.B., represented by S.B.:

The appeal of S.B., represented by S.B. is admissible and permissible. It has been filed against a decisions of the KPCC, by a party in the proceedings within the 30 day period, after the notification for the decision, as prescribed in Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 (hereinafter the 2006 Regulation or the Regulation).

The legal interest of S.B., represented by S.B. to be party in the current proceedings:

The Court considers necessary to elaborate on the legal interest of this appellant in this case because throughout the procedure he (personally or through his representative) gives different and contradictory statements regarding his interest in this dispute. In the proceedings in front of the first instance he claimed first rights regarding parcel 517, than he explained that he did not claim any rights to this parcel, but at the same time he said that he had built a house in the same parcel. In addition to that when invited by the KPA to clarify his stance or to withdraw his allegations he did not do it. Afterwards he filed an appeal against the decision in which on top of all his allegations he says that this dispute is not between him and the claimant but between the claimant and the other appellant. Regardless of these confusing and contradicting assertions the Court accepts that this appellant does claim rights regarding parcel 517 because he has built a house in it and therefore for the Court it is clear that the legitimate parties (those with material legal interest in the meaning of art. 2.4 of the Law on Contested Procedure) in this legal dispute are the claimant R.M. and the respondent S.B., who now *de facto* possesses the land as he has built a house in it.

However there is a procedural impediment for the adjudication of this appeal:

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 ownership of private immovable 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 the context of the established facts the statement of the claimant that the possession of the property was lost in relation to the armed conflict of 1998/1999 remains unjustified. He explains that in the past, before the war his father V.M. "sold" this property to his uncle I.M., but the property was never paid for entirelly. There is no dispute however that after this informal agreement the father of the claimant V.M. ceased to occupy the land and never used it anymore, the possession of the land, the physical occupation of the parcel (not the right of property) was transferred to a different person – the alleged "buyer" in the informal agreement and this happened long before the war, thus was a process completely unrelated and not influenced by it in any way. Regardless of what the legal effect of this "informal agreement" was – most probably none at all, *de facto* the father of the claimant lost possession over this land long before the armed conflict. Therefore no repossession can be claimed following the special procedure in front of the KPA and the Appeals Panel of the Supreme Court (arg. after Section 3.1 of UNMIK Regulation 2006/50). Any ordinary property disputes or monetary compensation claims should be resolved under the jurisdiction of the regular civil courts.

In this respect the Court should not elaborate on the merits of the appeal of S.B..

Considering that the claim of R.M. is outside the scope of the jurisdiction of the KPA, the appealed decision has to be annulled as rendered in the absence of jurisdiction and the claim has to be dismissed.

Cost 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 appeals (Section 10.11 of AD 2008/2: 30 €;
- court fee tariff for the issuance of the judgment – dismissal of the claim (10.21, 10.15 and 10.1 of AD 2008/2): € 30.

These court fees are to be borne by the claimant/appellee, who has filed an impermissible claim outside the jurisdiction of the KPA. They have to be paid within 15 days of the service of the notice for this decision. 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 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 **Sylejman Nuredini, Judge**

Elka Filcheva-Ermenkova, EULEX Judge **Urs Nufer, EULEX Registrar**