

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-182/11

Prishtinë/Priština, 22 June 2012

In the proceedings of

D. L.
Appellant

represented by

M. L.

Claimant

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/AR/101/2011 (case files registered at the KPA under the numbers KPA08466, KPA08469, KPA08471 and KPA08473), dated 23 February 2011, after deliberation held on 22 June 2012, issues the following

JUDGMENT

- 1- The appeal of D. L. is dismissed as impermissible.

- 2- Costs of the proceedings determined in the amount of € 60 (€ sixty) are to be borne by the appellant 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 11 January 2007, M. L., acting as a family household member on behalf of her deceased father-in-law, filed several claims with the Kosovo Property Agency (KPA), seeking to be recognized herself as the owner of different parcels of land acquired by inheritance and claiming repossession. She explained that these parcels had belonged to her deceased father-in-law M. N. L. She stated that the property had been usurped and that the date of the loss was 12 June 1999.

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

- her Marriage Certificate
- Copy of Possession List No. 38 issued by the Municipality of Podujevë/Podujevo, Cadastral Municipality Peran/Perane, on 3 October 1997.

Possession List No. 38 showed that amongst other parcels M. N. L. was the owner of the claimed parcels as follows:

Number of appeal and KPA case file	Data concerning the claimed parcel
GSK-KPA-A-182/11 (KPA08466)	Parcel No. 128, at the place called “Sojiste”, Peran/Perane, commercial without building, a 3 rd class meadow with a surface of 73 m ²
GSK-KPA-A-183/11 (KPA08469)	Parcels Nos. 137 and 138, both at the place called “Utrina”, Peran/Perane, commercial without building, No. 137 a 5 th class field with a surface of 4 ha 02 ar and 79 m ² , No. 138 a 3 rd class pasture with a surface of 2 ha 22 ar and 14 m ²
GSK-KPA-A-184/11 (KPA08471)	Parcel No. 312, at the place called “Sojiste”, Peran/Perane, commercial without building, a 2 nd class pasture with a surface of 5 ar and 55 m ²
GSK-KPA-A-185/11 (KPA08473)	Parcel No. 512, at the place called “Labeteske Njive – Kod D”, Peran/Perane, commercial without building, a 2 nd class field with a surface of 18 ar and 31m ²

The KPA did the notification first in 2007 by putting up signs on the places where the claimed parcels allegedly were located. In 2010, the notification was repeated. This time the KPA published the claim in the KPA Gazette and distributed the Gazette at several locations in the village and several offices of institutions responsible for cadaster and the processing of property rights claims.

Possession List No. 38 as well as the Marriage Certificate of the claimant could be verified.

On 20 March 2008, the KPA contacted the claimant and requested her to submit a death certificate of the property right holder as well as other documents, among them a power of attorney of a possible inheritor of the property. In spite of a deadline of thirty days, the claimant did not submit any other documents. On 2 April 2009, the KPA again contacted the claimant and gave her a deadline of thirty days to submit a power of attorney of possible inheritors. Nevertheless, the claimant did not submit any documents. On 13 December 2010, the claimant once again was asked to submit a power of attorney from possible inheritors and was informed that otherwise the claim could be dismissed.

On 23 February 2011, the Kosovo Property Claims Commission (KPCC) with its decision KPCC/D/AR/101/2011 dismissed the claims. Under No. 33 of its decision the Commission stated that as the claimant was not a family household member of the property right holder (Section 5.2 of UNMIK AD 2007/5 as amended by Law No. 03/L-079), she had to demonstrate her authorization to act on behalf of the property right holder - or a family household member of the property right holder - through a valid power of attorney. The claimant, however, who agreed on submitting a power of attorney given by one of the inheritors, had not provided such a document although she had been contacted by the KPA on numerous occasions.

The decision was served on the claimant on 26 September 2011. On 24 October 2011, the claimant filed several identical appeals with the Supreme Court, each of them concerning one separate claim, four of them in regard to the cases which have to be decided upon with this decision, two others regarding another decision of the KPCC.

The claimant now requested that the Supreme Court should provide her son, D. L., with the right of repossession of the property registered as the property of M. L. and located in the cadastral municipality Peran/Peranë.

The claimant explained that her father-in-law, M. L., had died on 11 December 1989. The appellant

explained furthermore that her husband, J. L., had died on 29 August. After the death of her father-in-law, the inheritance procedure had been completed and her son, D. L., had been declared one of the heirs.

She submitted amongst others the following documents:

- a Death Certificate issued on 27 September 2007 by the Republic of Serbia, Municipality of Podujevo, in Niš, confirming that M. L. had died on ... in Peran/Peranë;
- a Death Certificate issued in 1987 by the Socialist Federal Republic of Yugoslavia, Municipality of Novi Pazar, confirming that J. L. with permanent residence in Novi Pazar, address ..., had died on ... in Novi Pazar;
- Judgment II O. No. 7/93, issued on 1 November 1993 by the Municipal Court of Kursumlija, Department Podujevë/Podujevo, amongst others declaring D. L. heir to 1/10 to M. L.

In her appeal the appellant furthermore declared that she would now submit the request not on her own behalf or that of her father-in-law, but on behalf of her son, D. L., who was a legal successor to the property right holder, his late grandfather M. L. The appellant stated without further explanation that her son had not been able to submit the request on his own at the time when the request had to be submitted. She stated that she had obtained authorization from her son before she submitted the claim. To sustain this allegation, she provided the Supreme Court with a power of attorney, reading that D. L. authorized the claimant to submit requests – file appeals regarding the decision of the KPA in the cases KPA08466, KPA08469, KPA08471, KPA08473, KPA08476 and KPA08477 as well as for all the property registered in Possession List “No. 33”. The claimant was authorized to undertake all legal actions in this procedure. The power of attorney was issued in Belgrade, dated October 2011, the signature is illegible. The signature was certified under No. 13318/2011 by the Municipal Court of Novi Pazar on 10 October 2011.

The Supreme Court has joined the appeals according to art. 408.1 LCP. The party/parties, the facts and the legal issues of the cases are the same, only the parcels are different. The joining not only ensures the efficiency of the case but also reduces the costs of the proceedings. Cases GSK-KPA-A-183/11 (KPA08469), GSK-KPA-A-184/11(KPA08471) and GSK-KPA-A-185/11(KPA08473) are joined to the case GSK-KPA-A-182/11 (KPA08466).

Legal reasoning:

The Court notes that the appeal is filed by M. L. only in her position as a representative of D. L., her son. Accordingly, party to the appeal is not M. L. but D. L.

The appeal of D. L., however, is inadmissible on procedural grounds (Section 13.3 (b) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079).

Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 stipulates the following: "Within thirty (30) days of the notification to the parties by the Kosovo Property Agency of a decision of the Commission on a claim, **a party** may submit [...] an appeal against such decision" (accentuation by the Court).

D. L., however, has not been a party to the claim in the proceedings before the KPCC. The claim has been filed by his mother, M. L. She upheld her claim throughout the whole proceedings before the KPCC. Even when she was contacted by the KPA and informed that a power of attorney was necessary, M. L. did agree on submitting a power of attorney given by one of the inheritors of the property right holder, M. L., however, she never submitted such a power of attorney. And even more crucial is the fact that she never even mentioned that she would represent a certain person, represent her son D. L. His name is not mentioned once throughout the proceedings of the KPA.

Accordingly, the KPCC concluded correctly that party to the claim was only M. L. D. L., however, had not been a party to the claim.

The Court does not see any indication that D. L. had not been able to take part in the proceedings before the KPA (see also Section 12.11 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 and Article 258.4 (a) LCP). In the appeal, M. L. as a representative of her son does alleges that he was not able to file the claim. She gives, however, no facts why he should not have been able to file the claim. Furthermore, she gives no reason why she did not mention that she represented her son in the proceedings before the KPA and she does not give any reason why she did not provide the KPA with a power of attorney given by her son. As a consequence, the Court does not find any exceptional reasons why D. L. should be entitled to file an appeal.

Another decision, by which a change of the claimant/appellant would be allowed even in the appellate instance, would circumvent Section 8 of UNMIK AD 2007/5 as amended by Law No.

03/L-079, according to which claims had to be submitted to the Executive Secretariat on or before the expiry of six months from the date of promulgation of the Administrative Direction (promulgation: 1 June 2007). Would a change of claimant/appellant be allowed, the new claimant/appellant would have the position as if he had filed his claim in time, whereas in fact he had missed the deadline by far (in this case did not enter the proceedings in 2007 but only in 2011).

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 comprised at more than € 40.000: € 30 (half portion of the fees according to 10.1, but no more than € 30).

These court fees are to be borne by the appellant who 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. 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. 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

Philip Drake, EULEX Registrar