

**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-35/11

Prishtinë/Priština,

1 September 2011

In the proceedings of:

B.L.

Appellant/ Claimant's successor

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Antoinette Lepeltier-Durel, Presiding Judge, Anne Kerber and Sylejman Nuredini, Judges, deciding on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/76/2010, (case file registered at the KPA under the number KPA 23181), dated 16 June 2010, after deliberation held on 1 September 2011, issues the following

JUDGMENT

- 1- The appeal of L.B. is rejected as ungrounded.
- 2- The decision of the Kosovo Property Claims Commission KPCC/D/A/76/2010, dated 16 June 2010, as far as it regards the case registered under No. KPA 23181 is confirmed.
- 3- The costs of the proceedings determined in the amount of € 55 (fifty five Euros) are to be borne by the appellant, L.B., and 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 29 May 2007, D.B. filed a claim with the Kosovo Property Agency (KPA), seeking confirmation of property rights, repossession and compensation for use without his consent over the land parcel no. 52, with culture of 4th class, located at the place called “Belince”, cadastral zone of Doberdol/Dobri Do, possession list no. 46 dated 5 March 1996 of the Municipality of Pejë/Pec, with surface of 0, 47, 12 ha. He underlined that this immovable property was illegally occupied by unknown persons and that he lost the property due to circumstances relating to the war in 1998/1999.

To support his claim he provided the KPA with the possession list no. 46 issued by the Municipal Geodesy Department of Pejë/Pec, cadastral zone of Doberdol/Dobri Do, which indicated that the alleged parcel was registered under his name.

The KPA claim processing report to the Kosovo Property Claims Commission (KPCC or the Commission), dated 5 May 2010, indicated that according to the possession list no. 46 updated 20 October 2009, issued by the Department of Cadastre, Geodesy and Property of the Municipality of Pejë/Pec, the cadastral parcel no. 52 was registered under the name of the claimant D.B., but only in the extent of an ideal part of 1/3. As evidence of this updating, the KPA was provided with the judgment P.no.629/95 issued on 6 April 1998 by the municipal court of Pejë/Pec which referred to the final judgment P no. 813/80, dated 27 October 1980, also issued by the Municipal Court of Pejë/Pec and which, according to the cadastral office, was taken as a legal ground for such registration. The latest judgment had established the co-ownership rights of the three brothers, D., S. and S. B., as being 1/3 for each of them, over the immovable property of the possession list no. 46 of the cadastral zone of Doberdol/Dobri Do, including the cadastral parcel no. 52.

The claim processing report also showed that the publication of the claim was done on 4 March 2008 and the notification by putting a poster on the parcel on 5 November 2009. No respondent was identified and the immovable property was not in use. Within a period of time of 30 days from the date of notification, no respondent replied to the claim relating to this litigious immovable property.

The KPA claim processing report mentioned that the loss of possession occurred on 12 June 1999 due to the general situation in Kosovo and that the property right claim could not have been exercised due to circumstances related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999.

By decision KPCC/D/A/76/2010 dated 16 June 2010, the Commission decided that the claimant had established his property right over 1/3 of the claimed property, that he was entitled to possession over this property and that any person occupying the property had to vacate it within 30 (thirty) days of the delivery of the decision. The Commission also dismissed the claim for compensation for loss of use due to lack of jurisdiction over this claim.

The KPCC decision was received by L.B., the claimant's son, on 4 February 2011. The claimant's son filed an appeal on 16 February 2011. With his appeal, L.B. submitted the death certificate issued on 6 December 2010 by the municipality of Kraljevo of the Republic of Serbia, according to which his father passed away on 30 November 2010 and two possession lists already provided to the KPCC. He appealed the KPCC decision on the grounds foreseen by Section 12.3 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 on the Resolution of Claims Relating to Private Immovable Property, including Agricultural and Commercial Property, namely: incomplete establishment of the factual situation and erroneous application of material law, proposing to confirm the property right over the whole immovable property as requested in the claim filed by his father. L.B. denied any validity to the change operated at the cadastral office in order to register an ownership right limited to 1/3 ideal part of the parcel at stake.

Legal reasoning:

Legitimacy of the appellant:

As a preliminary matter, the Supreme Court observes that the appeal is brought by the claimant's son who was not a party at the first instance proceedings. Pursuant to Article 76 of the Law no. 03/L-006 on contested procedure, "*the court shall, at all stages of the proceedings, consider ex officio whether the person who appears as a party may be a party in the proceedings and whether he or she has procedural capacity to act...*"

The appellant provides the Supreme Court with his father's death certificate which brings the evidence that the claimant died on 30 November 2010. In compliance with Articles 277 a) and 280.1 of the same law on contested procedure, when a party passed away, the proceedings which are ipso

facto suspended can be resumed when the successor of the inherited property takes over the proceedings.

In the present case, with his appeal on behalf of his late father, L.B. has implicitly shown his will to continue the proceedings begun by his father.

Although he did not provide the Supreme Court with any inheritance decision, Section 5 of the Administrative Direction 2007/5 as amended by Law no.03/L-079 relating to the representation before the KPCC and the Supreme Court allows the claimant being represented by a member of the family household, meaning among others by his/her children.

For these combined reasons, the Supreme Court holds that L.B. has the capacity to be a party in the present procedure.

On the merits of the appeal:

The Supreme Court considers the appealed decision pursuant to provisions of Section 13,3 (c) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 and, according to its assessment of the appellants' allegations, finds that the appeal is unfounded.

The Supreme Court, taking into account the factual situation of the case, finds that the decision KPCC/D/A/76/2010, dated 16 June 2010, which deals with the claim no. KPA 23181, is grounded on complete and correct establishment of the factual situation and that the substantive law was justly applied. The Commission gives in the appealed decision sufficient and valid reasons for a fair adjudication of the case, which are though accepted by this court. The appealed decision does not contain any essential violation of the provisions of the law on contested procedure which should be raised ex officio by this court pursuant to Article 194 of the law on contested procedure. The assessment of the facts and the legal reasoning of KPCC, according to this court, are fair and lawful, giving sufficient argumentation while assessing the contradictory evidence.

Pursuant to Article 20 of Basic Law on Property Legal Relations, the Municipal Court of Pejë/Pec issued the final judgment P.no.813/80 on 27 October 1980, whereby the ideal parts of co-ownership of the cadastral parcel no. 52 of the cadastral zone of Doberdol/Dobri Do were evidenced as 1/3 of each of D., S. and S.B., all being brothers. This judgment represents a valid legal ground to gain the property rights as evidenced in the possession list no. 46, dated 4 March 2008 and 20 October 2009, issued by the Department for Cadastre, Geodesy and Property of the municipality of Pejë/Pec set up

by the provisional institutions of self-government in Kosovo. According to this possession list the three brothers D., S. and S. are evidenced as co-owners of the ideal parts. To deny this fact, the appellant provided the possession lists established on 5 March 1996 and on 3 April 2008. However, the latter cannot prove the appellant's allegations which are therefore ungrounded, unacceptable, incomprehensible and inconsistent, because it was issued by a cadastral office of the Republic of Serbia which is not operational in Kosovo since UNMIK set up the other cadastral office. Obviously, the office of Serbia has not taken into consideration or was not given the final judgment, which is the legal ground to register the title holders of the litigious immovable property, as it is justly indicated in the possession list no. 46, dated 4 March 2008.

From the abovementioned facts, it results that the factual situation in this legal case was fairly and completely established and that the confirmation of the KPCC decision has not been brought to question by any valid evidence, since in the appeal no new evidence or fact that is not object of consideration or detailed and fair assessment by the first instance court has ever been presented; therefore, the appellant's allegations that the claimant's brothers have not gained the property right in a valid manner are legally inconsistent; such allegations were subject of consideration and assessment by the KPCC, and have been justly rejected.

In addition, even if those allegations could have been proved, they could not have been subject of consideration and assessment by the Supreme Court pursuant to Section 3.1 of UNMIK Regulation 2006/50 as amended by Law no. 03/L-079. According to this provision, the Supreme Court has jurisdiction in case the property rights cannot be exercised due to circumstances directly linked or resulting from the armed conflict that occurred within the period from 27 February 1998 until 20 June 1999. In the case at hand, the subject matter of the claim is related to an old conflict between the appellant and his brothers which existed before the armed conflict and was already finally solved before this conflict.

Costs of the proceedings:

Pursuant to 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 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, as indicated in the evaluation report established by the municipality of Pejë/Pec at the request of the Supreme Court, is estimated at 5.000 €: 25 €.

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.

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.

For all the above mentioned reasons and pursuant to the provisions of Section 13.3 (c) of UNMIK Regulation 2006/50 as amended by Law 03/L-079, it is decided as in the enacting clause of this judgment.

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