

**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-45/11

Prishtinë/Priština

6 September 2011

In the proceedings of:

Ž.O.

Appellant/Claimant

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/D/A/55/2009 (case file registered at the KPA under the number KPA 17774), dated 15 December 2009, after deliberation held on 6 September 2011, issues the following

JUDGMENT

- 1- The appeal of Ž.O. is rejected as ungrounded.**
- 2- The decision of the Kosovo Property Claims Commission KPCC/D/A/55/2009, dated 15 December 2009, as far as it regards the case registered under No. KPA 17774, is confirmed.**
- 3- The costs of the proceedings determined in the amount of € 50 (fifty Euros) are to be borne by the appellant, Ž.O., and paid to the Kosovo Budget within 90 days from the day the judgment is delivered or otherwise through compulsory execution.**

Procedural and factual background:

On 9 January 2007, Ž.O. filed a claim with the Kosovo Property Agency (KPA), seeking confirmation of his property right and repossession of the cadastral parcel no.54/4, with culture of 2nd class, located at the place called “Oraske livade”, cadastral zone of Brezhanik/Brežanik,, possession list no. 139 of the Municipality of Pejë/Pec, with surface of 0, 03, 68 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 armed conflict in 1998/1999.

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

- the death certificate issued on 31.12.2002, which showed that A.O. had died on 9 May 1994;
- the death certificate of P.O. maiden name K., showing that she died on 6 February 1993;
- his birth certificate issued on 4 July 2011, establishing that he is A.O. and P.K.’s son;
- - the inheritance decision O. no. 29/02 and O.no. 30/02 issued on 26 November 2002 by the parallel court “municipal court of Pec” after the death of both A.O. and P.K., showing him as one the inheritors of the claimed parcel;
- - a statement signed on 6 July 1984 by two witnesses asserting that Ž.O.’s parents had a farm in the village of Brezhanik/Brežanik.

Ž.O. mentioned in his claim all the other inheritors appearing in the inheritance decision as interested parties, thus acting in capacity of a family household member of the alleged property right title holders pursuant to Section 1.2 of Annex II of UNMIK Administrative Direction 2007/5 as amended by Law No.03/L-079 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property.

The KPA claim processing report, dated 30 June 2009, indicated that according to the possession list no. 139 of 19 February 2008, issued by Department of Cadastre, Geodesy and Property of the Municipality of Pejë/Pec, obtained ex officio, the cadastral parcel no. 54/4 was registered in the name of the property right title holder, A.O., and that there had been no changes about this immovable property up to the date of its report. It also showed that, although the notification of the claim was done by putting a poster on the parcel on 6 December 2007 and the

publication of the claim was done on 24 December 2007, no respondent was identified and that the immovable property was not in use. Moreover, within a period of time of 30 days from the date of the publication, no respondent replied in relation to this litigious immovable property.

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

By decision KPCC/D/A/55/2009 of 15 December 2009, the Kosovo Property Claims Commission (the KPCC or the Commission) decided that the claimant had established his father's ownership over 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 KPCC decision was received by Ž.O. on 15 March 2011. On the same date, Ž.O. submitted to the KPA a request for administration of the property. Then, he filed an appeal on 28 March 2011. He explained that he had filed his claim before the KPA in order to obtain a correction of the decision O. no.29 and 30/02 issued by the so called "municipal court of Pec" on 26 November 2002, a parallel court. He asserted that this court had made a mistake about the surface allocated to each of the inheritors and proposed to allocate a part of 0, 15, 94 a to each of the seven inheritors of the de cujus A. and P.O..

Legal reasoning:

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 appellant's 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/55/2009, dated 15 December 2009, which deals with the claim no. KPA 17774, is grounded on complete and correct establishment of the factual situation and that the substantive law was justly applied. The KPCC gives in the appealed decision sufficient and valid reasons for a fair adjudication of this case, which are though accepted by this court. The appealed decision does not contain any essential violation of the provisions of 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.

Indeed, the claim which was submitted to the KPA is a claim for confirmation of ownership right and repossession over a parcel lost in circumstances related to the armed conflict that occurred in Kosovo. No claim for amendment of an inheritance decision was ever brought before the KPA.

Had such claim been filed, it would have been dismissed for the reason that the inheritance issues cannot be subject of consideration and assessment by the KPA Appeals Panel of 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 KPCC and the Supreme Court, panel in charge of the appeals filed against the KPCC decisions, have jurisdiction over the ownership claims with respect to private immovable property where the claimant is not able to exercise his property rights due to circumstances directly linked or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999. Therefore, the appellant's purpose to obtain the correction of an alleged mistake of the inheritance decision O. no. 29 and 30/02 of the parallel court called "Municipal Court of Pec" dated 26 November 2002, cannot be examined in the present proceedings.

This judgment is without prejudice to the appellant's right and interest to submit his claim to the competent court.

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 Kosovo Property Claims 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 is 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 2.000 €: 20 €.

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 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