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-83/11

Prishtinë/Priština
1 September 2011

In the proceedings of

V.Š.

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 decision of the Kosovo Property Claims Commission KPCC/D/AR/101/2011, (case file registered at the KPA under the number KPA49375), dated 23 February 2011, after deliberation held on 1 September 2011, issues the following

JUDGMENT

1- **The appeal of V.Š. is rejected as ungrounded.**

2- **The decision of the Kosovo Property Claims Commission KPCC/D/AR/101/2011, dated 23 February 2011, as far as it regards the case registered under No. KPA49375, is confirmed.**

3- **The appellant has to pay the costs of the proceedings which are determined in the amount of € 330 (€ three hundred thirty) within 15 (fifteen) days from the day the judgment is delivered or otherwise through compulsory execution.**

Procedural and factual background:

On 29 November 2007, V.Š., acting as a family household member on behalf of his deceased uncle, filed a claim with the Kosovo Property Agency (KPA), seeking to be recognized himself as the owner of a property located in Skenderaj/Srbica in Leoncina, parcel no. 812, a 4th class pasture with a surface of 4 ha 94 ar 65 m². In addition, the claimant asked for compensation for unauthorized usage of the property. The claim was registered as KPA49375.

The claimant explained that the parcel had belonged to his deceased uncle I.Š. and that he had inherited it. He stated that the property had been lost on 14 June 1999.

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

- Copy of the Possession List No. 112, issued on 8 November 1999, of the Immovable Property Cadastral Office of Skenderaj/Srbica, stating that parcel No. 812 was in the possession of I. (M.) Š.;
- Death Certificate, issued by the Municipality of Istog/Istok on 3 December 1996, confirming the death of Đ. Š. (father's name M. Š.) on 20 November 1996.

The possession list could be verified by KPA officers. On request of the KPA, the claimant agreed on submitting the property rights holder's (I. (M.) Š's) death certificate and power of attorney of possible inheritors. He explained that no inheritance procedure had been initiated. Although the claimant was given a deadline of thirty days for submitting the documents first on 24 November 2008, on 18 February 2009 and again on 3 August 2009 (this time he also was informed that the claim would be dismissed if he would not submit these documents), he did not provide the KPA with the additional documents but only explained that he was not sure when I.Š. had died. He thought it had been in 1969.

On 23 February 2011, the Kosovo Property Claims Commission (KPCC) dismissed the claim as the claimant was not a family household member of the property rights holder and had not demonstrated his 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 (KPCC/D/AR/101/2011, see No. 33).

The decision was served on the daughter of the claimant, R.R., on 22 June 2011.

On the very same day, the claimant (hereafter: the appellant) filed an appeal with the Supreme Court. To prove his kinship with the property rights holder, I.Š., he submitted the following documents:

- Death Certificate of I.Š., issued by the Republic of Serbia for the Municipality of Istog/Istok on 28 January 2011, showing that I.Š. had died on 5 March 1969,
- the abovementioned Death Certificate of Đ.Š., issued by the Municipality Istog/Istok on 3 December 1996,
- Birth Certificate of V.Š., issued on 30 August 2007 by the Republic of Serbia for the Municipality of Skenderaj/Srbica, showing that V.Š., father Đ.Š., was born on 20 February 1945 in Belicë/Belica.

The appellant explained that I.Š. and his brother Đ.Š. had lived in a household together. After they had passed away, the inheritance was not divided. However, one of the heirs of Đ.Š. (note of the Court: possibly the appellant himself, the submission is not quite clear) used a part of the property without any obstacles and limitations until 1999.

The appellant requested to accept the claim, place the property under the protection of the KPA and make a positive decision regarding the claim.

Legal reasoning:

The appeal is admissible, yet ungrounded.

The appeal is admissible. It has been filed within due time. The decision had been served on the appellant, represented by his daughter R.R., on 22 June 2011. The appeal was filed on the same day,

that is within the deadline of 30 (thirty) days prescribed by Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079.

However, the appeal is unfounded.

1. The appellant is not entitled to represent his uncle in the proceedings before the Commission and the Supreme Court as a family household member.

   According to Section 5.2 UNMIK Administrative Direction (AD) 2007/5 as amended by Law No. 03/L-079, "*where a natural person is unable to make a claim, the claim may be made by a member of the family household of that person*". According to Section 1 of the AD, "member of the family household" means: "*spouse, children (born in and out of wedlock or adopted) and other persons whom the property right holder is obliged to support in accordance with the applicable law, or the persons who are obliged to support the property right holder in accordance with the applicable law*". A nephew is not amongst these persons.

2. The appellant states that he has become the owner of the litigious property.

   a. He has, however, not submitted any evidence that he is the heir of I.Š.. He has not conducted the proper inheritance procedure so that he is not able to submit any document sustaining that he is his heir. The additional facts provided by him (for the first time) to the Supreme Court are no evidence of the appellant being the heir of I.Š.. It is of no effect to his position as an alleged heir of his uncle whether his uncle and his father lived in a joint household. The same applies to the fact that part of the property was used by Đ.Š. (who died in 1996) or one of his heirs until 1999. These alleged circumstances do not imply that the appellant was the heir of I.Š..

   b. The Court also does not find that the appellant has inherited the parcel from his father, Đ.Š.. According to the circumstances presented by the claimant, this only could be the case if Đ.Š. had inherited the parcel or had gained ownership of the parcel by adverse possession. The claimant does not explicitly allege that his father had inherited the parcel. The claimant also does not give any facts from which could be concluded that his father had inherited the parcel. The fact that his father and his uncle lived in a joined household does not provide evidence for Đ.Š. being the heir of I.Š..

The claimant also does not provide sufficient facts to conclude that Đ.Š. had gained ownership of the parcel by adverse possession. Even if Đ.Š. had used "part of the property" undisputedly until his death in 1996 (the submission of the claimant is not very precise), it cannot be concluded that "part of the property" is exactly parcel no. 812. Consequently, the Court cannot find that Đ.Š. used parcel no. 812, it cannot find that Đ.Š. gained ownership of that parcel and that the appellant afterwards inherited the parcel.

c. At last, it cannot be concluded that the appellant himself gained ownership of the parcel by adverse possession. As mentioned above, the used part of the property is not sufficiently described to conclude that the appellant used parcel no. 812 from 1969 (the year of the death of I.Š.) until 1999.

For these reasons the appeal has to be rejected as ungrounded and the decision of the KPCC as far as it is related to the claim has to be confirmed.

Costs of the proceedings:

Pursuant to Annex III, Section 8.4 of Administrative Direction (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 and 10.1 of AD 2008/2), considering that the value of the property at hand could be reasonably estimated as being € 50.000: € 300 (50 + 0,5% of 50.000).

These court fees are to be borne by the appellant who loses the case. According to Article 45.1 of the Law on Court Fees, the deadline for fees' payment by a person with residence or domicile in Kosovo is 15 (fifteen) days. If the appellant fails to pay the fees within the deadline, the fees will be collected by enforcement and a fine will be imposed on the appellant (Article 47.3 and 4 of the Law on Court Fees).

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.

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