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-8/09 **Prishtinë/Priština**

6 July 2011

In the proceedings of

S.D.

Appellant

vs.

N.S.L.

Claimant/Appellee

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/8/2008 (case file registered at the KPA under the number KPA27350), dated 22 February 2008, after deliberation held on 6 July 2011, issues the following

JUDGMENT

1- **The appeal of S.D. is accepted as grounded.**

2- **The decision of the Kosovo Property Claims Commission KPCC/D/A/8/2008, dated 22 February 2008, only in its part related to the claim filed on 30 March 2007 by N.S.L. and registered under KPA27350, is quashed.**

3- **The claim filed on 30 March 2007 by N.S.L. and registered under KPA27350 is rejected.**

4- **Costs of the proceedings determined in the amount of € 133 (one hundred thirty three) are to be borne by the appellee, N.S.L., and to be paid to the Supreme Court within 90 days from the day the judgment is delivered or otherwise through compulsory execution.**

Procedural and factual background:

On 30 March 2007, N.S.L. filed a claim with the Kosovo Property Agency (KPA) seeking for repossession of a property located in the municipality of Lipjan/Lipljan, cadastral zone Sllovi/Slovinje, possession list no. 37, parcel no. 891, with the name of Kod Groblja, a 4th class field with a surface of 3745 m².

He asserted that his father, S.M.L., was the owner of the property and that the parcel was occupied without authorization by an unknown person.

To support his claim, he provided the KPA amongst others with the possession list no. 37 of the municipality of Lipjan/Lipljan, issued on 12 July 2001, disclosing S.M.L. as the owner of the litigious parcel.

On 20 October 2007, the KPA Notification Team went to the litigious property and put up a sign notifying of the claim. In its notification report, the KPA Team noted that the litigious parcel was

found cultivated and that they tried to identify the person occupying the property, but that the inhabitants of the village did not want to name the person who used the property.

The KPA processed to the publication of the claim on the parcel on 5 November 2007. Since no respondent filed a reply within the deadline, the claim was considered as uncontested.

The verification report of the KPA ascertained the validity of the possession list submitted by the claimant.

On 24 January 2008, S.D. responded to the claim and stated that he had purchased the property of the alleged property holder. He stated that he had bought the parcel no. 891 (as well as parcel no. 892) from S.L. on 28 December 1994 on the amount of 52010 DM but had not transferred the land to his name. Furthermore he stated that he had been informed of the decision of the KPA only when he had come back from Germany on 12 January 2008. To sustain his statement he provided the KPA with the copy of a handwritten contract, pertaining to the purchase of the litigious property, a handwritten receipt referring to this contract and an excerpt of the cadastre, dating from 16 December 1994, showing that the owner of the parcel no. 891 Kod Groblja was S.M.L..

By its decision of 22 February 2008 (KPCC/D/A/8/2008) the Kosovo Property Claims Commission (KPCC) decided that the claimant had established that his father, S.M.L., was the owner of the claimed property and that he was entitled to possession of the said property.

The claimant received the KPCC decision on 5 December 2008. On 10 June 2009, the decision was delivered to the brother of S.D. who did not sign the delivery receipt.

On 18 June 2009, S.D. (from here on: the appellant), represented by his lawyer, filed an appeal against the aforementioned decision of the KPCC. He criticized that he had not been delivered the claim submitted by N.S.L. and so had not had the opportunity to reply to the claim. He stated that he had purchased the litigious property from S.L. by written contract on 11 July 2008 (correct: 10 July 2008), paid the total purchase price, entered into possession of this immovable property legally and had, with the consent of the claimant, registered the ownership over this immovable property in the relevant public records in CZ of Lipjan/Lipljan.

Attached to the appeal were copies of a real estate purchase contract, dated 10 July 2008, verified by the Municipal Court of Lipjan/Lipljan, Vr. no. 1865/2008, dated 11 July 2008. By this contract,

allegedly, S.D., represented by I.G., had bought the litigious property from L.S., represented by H.A.. A power of attorney for H.A. was not included. Attached was furthermore a power of attorney, issued by S.D., dating from 31 January 2008 and certified by the Municipal Court in Lipjan/Lipljan. Attached was also the certificate for the immovable property rights no. UL-71409077-00738 of the Municipal Cadastral Office of Lipjan/Lipljan, dated 21 August 2008. According to this certificate, S.D. was owner/possessor of the parcel no. 891, with the name Kod Groblja, a rural property used for agriculture with a surface of 3745 m^2.

The appeal as well as the attached documents was sent to the claimant on 30 October 2009.

On 8 March 2010, the Court informed the parties that the decision of the KPCC did not seem incorrect, as the appellant referred to a transfer of private immovable property which occurred subsequent to the KPCC's decision.

On March 2010 the appellant completed his reasoning. He stated again that he had not been heard by the KPCC. Furthermore he claimed that N.S.L. (from here on: the appellee), as he had never been the owner of the property, had not the right to file a claim before the KPA and that the former owner of the property had not given permission to do so. Furthermore he stated that the property had been bought on 28 December 1994 but that relating to the laws applicable back then which forbade the sale and the certification of the contract by the courts the contract was certified only on 11 July 2008. Attached was amongst others a copy of power of attorney for H.A., given by S.L. on 21 May 2008, certified by the Municipal Court of Lipjan/Lipljan.

On 5 May 2011, a KPA officer contacted the appellee to ascertain whether he had received the appeal and the documents. The appellee confirmed that he had received the documents but did not want to reply as he had sold the property to the appellant.

Legal reasoning:

The appeal is admissible.

The appeal has been filed within the deadline of 30 days provisioned by Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079. The appeal was filed on 18 June 2008. The deadline for the appeal had not yet expired. It not even had begun. The decision was served not on the appellant, but on his brother. According to Section 6.5 lit. (b) of UNMIK Administrative Direction 2007/5 as amended by Law No. 03/L-079, "*service shall be deemed to have been effected*" in the case of personal service of the document "*on the day on which the addressee acknowledged receipt*" of the document. Here the decision was served in the way of personal service, but not on the addressee, the appellant, but on his brother.

The appellant also had not lost his right to appeal. Indeed he had missed the deadline for responding to the claim, yet he has given an explanation and excuse in that that he first heard about the claim in January 2008 after his return from Germany where he worked. That it took him 12 days to respond to the claim is not to be held against him as this period is rather short and seems to be necessary for a party to consider the facts in a responsible way.

The appeal also is grounded.

In order to satisfy the requirements for a valid claim, the claimant or the property right holder, as the case may be, must show that he or she had an ownership or use right in respect of the claimed property, and that he or she is not now able to exercise his or her property right due to the circumstances directly relating to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999 (see section 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079).

The appellee, however, has failed to prove that he or his father is not now able to exercise his property right due to the circumstances relating to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.

The appellant has stated that he had bought the property first in 1994, then again in 2008. The appellee, who was aware of the appeal and the reasoning of the appellant, has not countered the

submission of the appellant. In fact, he even has informed the officer of the KPA that he had indeed sold the property in 2008 to the appellant.

The appellant also states that he had bought the property already in 1994. The appellee does not contest this statement. So the Court considers the allegations of the appellant which are also supported by copies of the contract and diverse receipts as given facts. However, if the appellant had bought the property already in 1994 and if the transfer of the property had been validly completed, the father of the claimant/appellee cannot have lost the property because of the armed conflict in 1998/1999.

The question whether the written contract of 1994 between S.L. and the appellant, which had not been certified by a court, had been sufficient to transfer the property to the appellant need not be answered in this case. The contract of 1994 might have been inefficient as it had not been certified and the appellant had not been registered as the owner of the property due to the laws which had been in force in 1994. With the contract of 2008, however, which was certified according to the laws now in force, and with the registration of the appellant as owner of the property, the contract of 1994 has been affirmed. This affirmation comes into effect *ex tunc*, that means that the contract has to be considered as having been valid and sufficient to transfer the property already in 1994. Accordingly, the appellant has been the owner of the property since 1994. As a consequence, the father of the claimant/appellee already had lost his property rights in 1994, so he could not have lost them in 1998/1999. As the claimant/appellee has failed to prove that he (or his father) had lost the property because of the armed conflict in 1998/1999.

As the KPCC has not considered these facts, because it had not been informed of them, its decision rests upon an incomplete determination of the facts (Section 12.3 subparagraph (a) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079). The appeal therefore is grounded and the claim has to be rejected.

Court fees:

Pursuant to Article 8.4 of Administrative Direction (AD) 2007/5 as amended by the 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 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 (Sections 10.21, 10.12 and 10.1 of AD 2008/2), considering that the value of the property at hand according to the information of the municipality of Lipjan/Lipljan could be reasonably estimated as € 16600: € 133 (€ 50 + 0,5% of € 16600)

These court fees are to be borne by the appellee that 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 appellee 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 the Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Antoinette Lepeltier-Durel, EULEX Presiding Judge

Anne Kerber, EULEX Judge

Sylejman Nuredini, Judge

Holger Engelmann, Eulex Registrar