

**SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA**

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË AKP-ës
ŽALBENO VEÇE KAI**

GSK-KPA-A-58/13

Prishtinë/Priština,

10 December 2013

In the proceedings of

L.A

Claimant/Appellant

vs.

H.H

Respondent/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Elka Filcheva-Ermenkova, Presiding Judge, Dag Brathole, and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission THE KPCC/D/A/149/2012 (case file registered at the KPA under the number KPA 34140) dated 19 April 2012, after deliberation held on 10 December 2013, issues the following

JUDGMENT

- 1. The appeal of L.A against the decision of the Kosovo Property Claims Commission THE KPCC/D/A/149/2012, dated 19 April 2012, regarding case file registered at the KPA under the number KPA34140, is rejected as unfounded.**

2. The decision of the KPCC/D/A/149/2012, dated 19 April 2012, regarding case files registered at the KPA under the number KPA34140, is confirmed.

Procedural and factual background

1. On 16 January 2007 L.A filed a claim with the Kosovo Property Agency (KPA), seeking ownership of the commercial property-cadastral parcels: 1057/2, 1059/4, 1059/8 and 1059/9, identified within Possession List 1119, at the place called “Fusha-Te Rasatniku/Fusha-Gornji Rasadnik”, with total surface 1.76.70 ha, Cadastral Zone of Podujevë/Podujevo, in Municipality of Podujevë.Podujevo.
2. In the claim it is stated that I.M is occupant on the property. He has not made a reply to the claim. H.H has responded to the claim, acting as a household member of SH.I. The KPCC has registered H.H as the responding party.
3. On 19 April 2012 the KPCC dismissed L.A' claim, stating that it was outside the jurisdiction of the KPCC according to Article 3.1 of UNMIK/REG/2006/50 as amended with Law No. 03/L-079 (hereinafter: Law No. 03/L-079).
4. The KPCC decision was served on L.A on 27 December 2013. She appealed the decision 17 January 2013. The appeal was served on H.H 17 July 2013. He did not reply to the appeal within the deadline of 30 days.
5. The case file was received by the KPA Appeals Panel of the Supreme Court 30 October 2013.
6. L.A states in the claim that she sold one part of the contested property to SH.I in 1998. Another part of the property, which consists of 10 ar was sold to I.M at the same time. Internal sales contracts were made between the parties, but they remained in the house when L.A left the house in June 1999. L.A claims that she has received only one half of the purchase price from I.M. This fact has not been disputed in the case.

The arguments of the parties

7. L.A has stated in the appeal that she does not dispute the ownership of SH.I, who bought the property from her in 1998. This was also evident from the claim she submitted to KPA. However she maintains that I.M, who bought 10 ar of the property, has only paid half the purchase price. The claim and the dispute concern only this parcel. She now claims repossession of the 10 ar she sold to I.M. The KPCC has not dealt with this claim and the name I.M is not mentioned in its decision. Whereas L.A claimed payment of the remaining part of the debt before the KPCC, she claims repossession of the property before the Supreme Court.
8. H.H claimed ownership of the contested property on behalf of SH.I before the KPCC. He has not responded to the appeal

Legal reasoning

9. The appeal is admissible because it has been filed within 30 days as foreseen by section 12.1 of Law No. 03/L-079.
10. The Supreme Court has noted that L.A has stated in her claim, and further clarified in her appeal, that her claim is directed against I.M, and not against SH.I. The Supreme Court considers that it would have it natural for the KPCC to comment on this fact.
11. However the Supreme Court agrees with the KPCC that the claim falls outside the jurisdiction of the KPCC and the Supreme Court.
12. According to Section 3.1 of UNMIK 06 the KPCC has the competence to conflict related claims involving circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999. A claimant not only has to provide an ownership title over a private immovable property, but also has to show that he or she is not now able to exercise such property rights by reason of circumstances directly related to or resulting from the armed conflict.
13. In this case L.A confirms that she has sold the disputed property to SH.I and a parcel of the property to I.M. L.A has no unresolved issue with SH.I, and the dispute with I.M concerns the lack of payment of half the purchase price. Accordingly the dispute is not related to the armed conflict in 1998/1999, and the KPCC does not have jurisdiction in the case.

14. The Supreme Court therefore confirms the decision of the KPCC and rejects the appeal as ungrounded.

Legal Advice

15. Pursuant to Section 13.6 of UNMIK 06, this judgment is final and cannot be challenged through ordinary or extraordinary remedies.

Elka Filcheva-Ermenkova, EULEX Presiding Judge

Dag Brathole EULEX Judge

Sylejman Nuredini, Judge

Holger Engelmann, EULEX Registrar