

**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-49/12

Prishtinë/Priština, 8 May 2012

In the proceedings of

N.T.

Claimant/Appellant

vs

L.V.

Respondent/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Anne Kerber, Presiding Judge, Elka Filcheva-Ermenkova and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/R/131/2011 (case file registered at the KPA under the number KPA00109), dated 26 October 2011, after deliberation held on 8 May 2012, issues the following

JUDGMENT

- 1- The appeal of N.T. against the decisions of the Kosovo Property Claims Commission KPCC/D/R/131/2011 regarding case file registered at the KPA under the number KPA 00109, is rejected as unfounded.
- 2- The decision of KPCC/D/R/131/2011 regarding case file registered at the KPA under the number KPA 00109 is confirmed.
- 3- The appellant has to pay the costs of the proceedings which are determined in the amount of € 140 (€ one hundred and forty) within 15 (fifteen) days from the day the judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 26 June 2006 N.T. (the claimant) filed a claim with the Kosovo Property Agency (KPA) seeking repossession of a house situated in parcel 519, Cetinja 19, Mitrovicë/Mitrovica. The claimant explained that the property in question was illegally occupied by the respondent L.V. in 2000.

To support her claim Mrs T. presented to the KPA decisions issued by the Municipal Court in Mitrovicë/Mitrovica on 16 Feb 1999 and on 18 Nov 1998 and a decision, issued in a procedure for the imposition of injunction measure, issued by the same court on 08 Apr 1997.

The claimant has indicated L.V. as the occupant of the property.

The KPA processed the notification by putting a poster on the building in parcel 519 on 25 Oct 2007. In a report, dated 04 Oct 2011, the KPA (the Executive secretariat) clarifies that the Secretariat has contacted the claimant on 13 Sept 2011 and asked her additional questions. The claimant has explained that she has not been in permanent possession of the disputed property since 1992, as a result of the divorce with her husband. She attempted to repossess the property in 1995, but the repossession was terminated after one month “when her previous sister-in-law, M., with the support of the local police evicted her from the claimed property”.

With a cover decision No KPCC/D/R/131/2011, dated 26 Oct 2011, regarding claim 00109 the KPCC has decided that the claim falls outside the mandate of the Commission as set out in section 3.1 of UNMIK/REG/2006/50 as amended by Law No 03/L-079. The Commission noted that “the claimant acknowledges that she lost possession of the claimed property in 1992 as a result of the divorce of her

husband at the time. Accordingly it cannot be said that the claimant's loss is directly related to or resulting from the 1998-1999 conflict".

The claimant received the KPCC decision on 09 Feb 2012.

On 24 Feb 2012 the claimant, now appellant, filed an appeal with the Supreme Court against the aforementioned decision.

The appellant claims that the dispute is a consequence of the conflict and that the property is unjustly used by the respondent.

Legal Reasoning:

The appeal is admissible. It has been filed within the period of 30 days prescribed in Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079.

However, the appeal is ungrounded. The decision of the KPCC is correct, the case is not within the jurisdiction of the KPCC.

According to Section 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, a claimant is entitled to an order from the Commission for repossession of the property if the claimant not only proves ownership of private immovable property, but also 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 that occurred in Kosovo between 27 February 1998 and 20 June 1999.

The claimant herself has stated in front of the KPA that she has lost possession over the disputed property in 1992 after the divorce with her husband at that time, that she has been repossessed only for a month in 1995 and afterwards again evicted from the property from her ex sister –in-law with the support of the local police. Obviously the dispute regarding the claimed property has started long before the events in 1998 and 1999 and is in no aspect linked to the armed conflict between 27 February 1998 and 20 June 1999. The fact that the dispute has originated in a context completely unrelated to the conflict is confirmed also by a documents presented by the claimant herself – the above mentioned court decision, issued by the Municipal court in Mitrovicë/Mitrovica on 16 Feb 1999. It was regarding a dispute between N.T. on one side and S.T. and P.M. on other. The Municipal court has decided that N.T. is entitled to the right of property over one half of a house, situated in parcel 519 in Mitrovicë/Mitrovica. I.e. the dispute regarding the property rights towards the house in parcel 519 is not related with the armed conflict of 1998-1999 and has to be dealt with within the system of the regular civil courts.

As the claim is out of the jurisdiction of the KPCC, the KPCC had not to decide on the ownership of the appellant/claimant.

Following the same line - because of the lack of jurisdiction, the Court has not to decide whether the appellant is the owner of the claimed property or not.

Costs of the proceedings:

Pursuant to Annex III, Section 8.4 of 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 comprised at € 12000: €110 (€ 50 + 0,5% of € 12000).

These court fees are to be borne by the appellant who should pay them within 15 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.

Anne Kerber, EULEX Presiding Judge

Sylejman Nuredini, Judge

Elka Filcheva-Ermenkova, EULEX Judge

Urs Nufer, EULEX Registrar