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-5/10 **Prishtinë/Priština**

13 July 2011

In the proceedings of

B.G.

Appellant

vs.

V.K.

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 decisions of the Kosovo Property Claims Commission KPCC/D/A/29/2008 (case file registered at the KPA under the number KPA15764), dated 19 December 2008, and KPCC/D/A/19/2008 (case file registered at the KPA under the number KPA15763), dated 20 June 2008, after deliberation held on 13 July 2011, issues the following

JUDGMENT

1- **The appeal of B.G. is accepted as grounded.**

2- **The decision of the Kosovo Property Claims Commission KPCC/D/A/29/2008, dated 19 December 2008, only in its part related to the claim registered under KPA15764, is quashed.**
The decision of the Kosovo Property Claims Commission KPCC/D/A/19/2008, dated 20 June 2008, only in its part related to the claim registered under KPA15763, is quashed.

3- **The claims filed on 20 October 2006 by V.K. and registered under KPA15764 and KPA15763 are dismissed.**

4- **Costs of the proceedings determined in the amount of € 830 (eight hundred thirty) are to be borne by the appellee, V.K., and to be 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 20 October 2006, V.K. filed a claim with the Kosovo Property Claims Agency (KPA) seeking for repossession of a property located in the municipality of Prishtinë/Priština, cadastral zone Donja Brnjica/Bërnicë e Poshtme, in the area called "Slatina", parcel no. 149, a 3rd class field with a surface of 1.35.31 ha and a 2nd class pasture with a surface of 0.05.50 ha and parcel no. 148, a 3rd class field with a surface of 0.59.63 ha. The claim concerning the parcel no. 148 was registered as claim KPA 15763, the claim concerning the parcel no. 149 as claim KPA 15764.

V.K. asserted that he was the owner of the property and that the parcels were occupied without authorization by unknown persons. He also stated that he lost the property on 1 June 1999 due to the circumstances in 98/99 in Kosovo.

To support his claim, he provided the KPA with the decision of the Commission for the Repossession of Land no. 462-104/91 MA Prishtinë/Priština, dated 13 April 1992, disclosing him as the owner of the litigious parcel. According to this decision, the parcel, amongst others, had been the property of his late father, A.K., and had been confiscated from him by a decision of the District Commission for Agriculture Fund of the Municipality of Graçanicë/Gracanica County in 1953. As the legal successors of A.K., amongst them the claimant, had found an agreement, the claimant's ownership right regarding the litigious property was confirmed by the Commission for the Repossession of Land.

Later on in the proceedings, the claimant submitted a death certificate showing that A.K. had died on 8 July 1988.

On 13 August 2007, the KPA Notification Team went to the litigious property and on each of the parcels put up a sign notifying of the claim. In its notification report, the KPA Team noted that the litigious parcel was uncultivated land which was not occupied. The notification for both parcels was checked in February 2010 based on GPS coordinates and ortophoto and found to have been properly done.

Since no respondent filed a reply within the deadline, the claim was considered as uncontested.

The verification report of the KPA, dated 1 March 2007, stated that the property rights obtained by the decision of the Commission for Land Repossession number 462-104/91 MA Pristina, dated 13 April 1992, had not been transferred and registered in the cadastre. The Verification Team of the KPA however found the UNMIK possession list no. 246, dated 11 July 2007, according to which V. (A.) K. was the owner of the litigious property (parcel no. 148 as well as parcel no. 149).

By its decision of 20 June 2008 (KPCC/D/A/19/2008), the Kosovo Property Claims Commission (KPCC) decided that the claimant had established that he was the owner of parcel no. 148 and as such entitled to possession of the said property. By its decision of 19 December 2008 (KPCC/D/A/29/2008) the KPCC decided that the claimant also was the owner of parcel no. 149 and entitled to its possession.

On 27 March 2009, V.K., represented by D.K., requested the repossession of parcel no. 148 from the KPA. On 8 May 2009, when he was served with the decision of the KPCC concerning this

parcel, V.K. requested the repossession of parcel no. 149 from the KPA.

On 19 August 2009, the KPA officers inspected parcel no. 149 and noticed that it was not occupied. The local people who were present during the visit told the notification team that the property was not occupied. Pictures of the property show that it was pasture which was not in use. As no appeal had been filed, the KPA considered the case as implemented (internal memorandum dated 23 October 2009).

Already on 3 June 2009, KPA officers had inspected parcel no. 148 and found it occupied. Despite of their efforts on this day and later on 18 June 2009 they were not able to identify the person which was using the property. Only on 20 July 2009 a land neighbour told the team that the property had been purchased by S.G., who also was using the property. He gave the mobile number of S.G. to the KPA notification team. Yet the team could not find S.G..

On 20 Mai 2010, a KPA team went to parcel no. 148 for eviction. The eviction however was not successful as then the parcel was under construction. The team could not find out who did the construction.

On 31 May 2010, the Eviction Unit of the KPA again planned the eviction. The land was found occupied and integrated into a huge villa-zone village, divided into parts with built-in central road and street lights by unknown persons, allegedly sold according to the information table at its entrance. The KPA officers contacted the alleged owner B. (S.) G. and invited him to visit with the purchase documents for clarifying the case. The parcel was sealed.

On 7 June 2010, B.G. (henceforth: the appellant) filed an appeal against the decisions of the KPCC. He stated that the claimant had sold the property (parcels no. 148 and no. 149) to him on 30 October 2007 and that during the purchase proceedings the claimant had not advised him that he had filed a claim with the KPA. Therefore the appellant had not taken part in the proceedings of the KPA. He provided the KPA amongst others with the following documents:

- purchase contract, dated 30 October 2007, signed by the parties and certified by the Municipal Court of Prishtinë/Priština (Vr. nr. 9508/2007);
- certificate for the immovable property rights issued by the Municipal Cadastral Office of Prishtinë/Priština on 13 March 2008, showing him as the owner of the litigious property;

- decision of the Finance and Property Directorate of Prishtinë/Priština no. 010-413/3103-24244 dated 31 October 2007 concerning the tax for transaction;
- receipt for the payment of the tax.

The appeal and the enclosed documents were sent to the claimant (henceforth: the appellee) on 4 August 2010. The appellee however did not sign the receipt. On 29 April 2011, he was successfully served with the appeal. The appellee, however, did not reply to the appeal.

Later on in the proceedings, the Court joined the appeals.

Legal reasoning:

1. The appeal is admissible.

   The appeal has not been filed without the deadline of 30 days provisioned by Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079. As the decisions of the KPCC had not been served on the appellant, the deadline for the appeal had not yet begun.

   The appellant also has not lost his right to appeal. Indeed had he missed the deadline for responding to the claim, yet the Court accepts his excuse that he was not informed by the claimant of the proceedings of the KPA. There is no indication that the appellant was informed of the proceedings during the notification process. After having been informed for the first time of the KPA-proceedings on 31 May 2010, the appellant lodged the appeal on 7 June 2010, that is in due time.

2. 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 now has the ownership right and is not now able to exercise his ownership 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 (see section 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079).

The Court decides on the facts presented to it until the date of the deliberation and issuance of the judgment, provided those facts meet the requirements of Section 12.11 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079. This section reads as follows: "*New facts and material evidence presented by any party to the appeal shall not be accepted and considered by the Supreme Court unless it is demonstrated that such facts and evidence could not reasonably have been known by the party concerned*".

As the facts and evidence represented by the appellant meet these requirements, the Court takes them into consideration. As mentioned above, the appellant did not have the possibility to present these facts during the proceedings of the KPA as he had no knowledge of these proceedings. The Court also notes that these facts could not have been considered by the KPCC as the KPCC was not informed of them.

Based on the facts and evidence the appellant provided and the appellee did not contest, the Court finds that the claim does no longer meet the requirements of section 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079. The appellant has presented valid evidence to prove that the appellee transferred his ownership right to him.

The appellant states that he bought the property from the appellee on 30 October 2007. The appellee did not contest this statement. The purchase contract of 30 October 2007 submitted by the appellant has been signed by the parties and been certified by the Municipal Court of Prishtinë/Priština (Vr. nr. 9508/2007). The Court also notes that the signature of the appellee is the same as it is on the claim forms. So the Court is convinced that the parties indeed concluded the contract. Therefore the appellee no longer has the ownership right.

For these reasons the decision rests upon an incomplete determination of the facts (Section 12.3 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079). Accordingly the Supreme Court holds that the appeal is grounded and that the KPCC's decisions have to be quashed.

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 purchase contract of the parties is € 150000: € 800 (€ 50 + 0,5% of € 150000)

These court fees are to be borne by the appellee 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 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

Urs Nufer, EULEX Registrar

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KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
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GSK-KPA-A-5/10
(KPA 15764 and KPA 15763) Pristinë/Priština, 1 March 2012

In the proceedings of

B.G.

Appellant

vs.

V.K.

Claimant/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Anne Kerber, Presiding Judge, Elka Ermenkova and Sylejman Nuredini, Judges, after deliberation held on 1 March 2012 issues the following

RULING

The judgment GSK-KPA-A-5/10, issued on 13 July 2011, according to on account of an obvious writing mistake ex officio is corrected under No. 4 as follows:

"4. Costs of the proceedings determined in the amount of **€ 530 (five hundred thirty)** […]"

Accordingly the paragraph regarding the court fees is corrected as follows:

- 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 purchase contract of the parties is € 150000: **€ 500** (€ 50 + 0,5% of € 150000 **up to a maximum of € 500**)

(See Article 165.1 of Law No. 03/L-006 on Contested Procedure)

Anne Kerber, EULEX Presiding Judge ***Elka Ermenkova, EULEX Judge***

Sylejman Nuredini, Judge ***Urs Nufer, EULEX Registrar***