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-123/12

Prishtinë/Priština
19 February 2013

In the proceedings of

D. D.

Appellant/Claimant

vs

Xh. K.
Batllave/Batlava

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/A/142/2012 (case file registered at the KPA under the number KPA26802), dated 29 February 2012, after deliberation held on 19 February 2013, issues the following

JUDGMENT

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1- **The decision of the Kosovo Property Claims Commission KPCC/D/A/142/2012, dated 19 April 2012, as far as it regards the case registered under KPA26802 is annulled and the claim is dismissed as it does not fall within the scope of jurisdiction of the KPCC.**

2- **Costs of the proceedings determined in the amount of € 55 (fifty five) are to be borne by the appellant and have to be paid to the Kosovo Budget within 90 (ninety) days from the day the judgment is delivered or otherwise through compulsory execution.**

Procedural and factual background:

On 26 November 2007, D. M. filed a claim with the Kosovo Property Agency (KPA), seeking repossession of a property located in Fushë Kosovë/Kosovo Polje, Grob. Njive-Grob. N.,. parcel 139 – agricultural land of 49 ar 62 m2. She stated that her late father was the owner of the field and that it was occupied by A. K..

She submitted – amongst others – Possession List No. 601 for Cadastral Zone Fushë Kosovë/Kosovo Polje showing that the litigious property was registered under the name of D. I. S., death certificate of the latter and birth certificate of D. D. – son of D.I. S. and power of attorney given from D.D. to D. M..

Xh. K. responded to the claim, stating that the land was purchased from the father of the claimant in 1965 – purchase contract dated 20 February 1965.
The claimant stated that her father sold to the K. family parcels 1/107, 3/253/2 and 1/110, but the buyers did not pay the whole price and afterwards there was a court agreement – on 22 October 1965. She claimed that parcels 416/1, 417/1 and 139 (the disputed one) was not an object of the purchase in 1965 and the court agreement of 1966. Later the claimant explained to the Executive Secretariat that actually she does not know which parcels were sold to the K. family in 1965. However she confirmed that after 1965 her family never used the disputed parcel. Her family lived elsewhere until 1999 when her brother D. D. left Kosovo.

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With its decision KPCC/D/A/142/2012, dated 19 April 2012, as far as it regards the case registered under KPA26802 the KPCC rejected the claim as unfounded. It has accepted that the claimant failed to establish ownership right or possession over the claimed property before or at the time of the conflict. It was accepted that the father of the claimant sold the property in 1965, the numbers of the parcels have changed afterwards and according to a cadastral decision from 2008 there are four co-owners of the claimed parcel, based on the 1965 contract (the four co-owners are from the K. family). During the procedure in front of the KPCC the Executive Secretariat has established what the claimant has confirmed herself that the parcel in question has been in a possession of the K. family for more than 40 years.

The decision was served on the claimant on 6 August 2012.

On 3 September 2012, the claimant, now appellant, filed an appeal with the Supreme Court. She challenged the decision for erroneous and incomplete determination of facts (in the wording of the appellant: "unfounded"). She explains that she has requested from the KPCC to be recognized as the owner of four parcels: 139, 416/1, 417/1 and 451/1, with a total surface of 1 ha 41 ar 48 m². The KPCC has taken a decision only regarding parcel 139. The decision is taken on the basis of the uncertified purchase contract from 1965 and a decision of the Cadaster office from 2008 but this Cadastral decision is contradictory because in the preamble it calls for the Contract from 1965 and in the enacting clause the numbers of the parcels which are allegedly sold are not connected with the contract from 1965. This is because with the contract from 1965 the father of the claimant sold agricultural land with a total surface of 3 ha 72 ar which was registered like three cadastral parcels: : parcel no. 1, possession list 52 with a surface of 1 ha 27 ar 99 m² ; parcel no. 3/203/2, possession list 1/110 with a surface of 95 ar and parcel no. 300, the same possession list (1/110) with a surface of 1 ha and 50 ar. The three parcels from the contract from 1965 had been renumbered and are currently registered as property of the K. family and the four parcels with a total surface of 1 ha 41 are and 48 m² (among which also parcel 139) have nothing to do with the K. family. Therefore she requests the decision of the KPA to be annulled and her rights regarding four parcels with a total surface of 1 ha 41 are and 48 m2 to be confirmed.

The appellee did not reply to the appeal.

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.

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However the decision of the KPCC with which the claims has been rejected as unfounded has to be annulled ex officio as the case does not fall within its jurisdiction. The KPCCC had not to decide on the merits of the case but to dismiss it - Section 11.4 (a) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079). As this has not been done the appealed decision *ex officio* has to be annulled and the claim dismissed (argument after art. 198 (1) of the Law on Contested Procedure which is applicable *mutatis mutandis* for the procedure in front of the Appeals Panel of the Supreme Court under section 12.2 of the UNMIK/REG/2006/50). According to art. 198 (1) LCP if the first instance has taken a decision over a claim which does not fall within its jurisdiction the court of second instance has to annul the decision and dismiss the claim.

According to Section 3.1 of UNMIK/REG/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. According to section 2 General principles, point 2.1 of UNMIK/DIR/2007/5 as amended by Law No. 03/L-079 "any person who had an ownership right, lawful possession of or any lawful right of use of or to private immovable property, who at the time of filing the claim is not able to exercise his/her rights due to circumstances directly related to or resulting from the armed conflict of 1998/1999 is entitled to reinstatement as the property right holder in his/her property right".

The texts are clear that the purpose of this special law (the Regulation) is to ensure the restitution of property rights that cannot be exercised because of circumstances related to the war conflict of 1998/1999. It does not serve for the resolution of conventional property related disputes, which are in no way related to the armed conflict. The property disputed not related to the conflict of 1998/1999 have to receive their resolution following the regular civil procedure and in front of the regular civil courts.

In the current case it is undisputed that the property in question had been occupied by the family of the respondent (K.) long before the armed conflict of 1998/1999, at least 40 years before that. Inversely at the same moment in time – i.e. long before the war of 1998/1999 the family of the claimant (D.) ceased to use this parcel – no. 139. The claimant herself admits that and it had been also established by the Executive secretariat.

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It is not clear whether this factual "transfer" happened on the basis of the 1965 contract or on the basis of a mutual informal agreement between D. and K. and it does not necessarily mean that the property right was transferred as well. If the contract was concluded according to the law in force at the given time it would have transferred the right, if not it would not, but the right could have been afterwards acquired by the alleged buyer on the basis of adverse possession. The latter is a factual stance which can be transformed into an ownership right if the conditions of the material law have been satisfied – the conditions for that vary in different countries, but usually they include open and peaceful occupation for a significant period of time – *e.g.* according to art. 40 of the Law on Property and Other Real Rights (Law No.03/L-154 of 2009, OG No. 57/2009) it is 20 or 10 years (the short time period is if the possession is under the color of a certain registration). Same time periods were applicable under art 28 of the Law on Basic property Relations (OG SFRY, No.6/1980).

However in this case it is irrelevant whether the respondent Xh. K. or his predecessor have acquired the right of property on the basis of adverse possession or on the contrary whether the claimant D. M., through inheritance from her father is still the rightful owner. This should be decided upon in a conventional civil suit before an ordinary civil court and only there it could be explored whether parcel 139 was transferred in 1965 or whether if not the K. have acquired it via adverse possession afterwards if they so consider.

The jurisdiction of the KPCC and the current Panel is excluded not because the claimant and *vice versa* the respondent **is or is not** a property owner, but because the loss of possession and the inability to exercise the right of property by the time the claim was filed is not related to the armed conflict of 1998/1999.

Therefore the decision of the KPCC has to be annulled and the claim dismissed as being without the jurisdiction of the KPCC and the Court.

The Courts decision is without prejudice to the right of the parties to seek confirmation of his property right before the competent local courts.

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

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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, 10.15 and 10.1 of AD 2008/2) considering that the value of the property at hand could be reasonably estimated as being above € 4900: € 25.

These court fees are to be borne by the appellant who loses the case. According to Article 45 Paragraph 1 of the Law on Court Fees, the deadline for fees' payment is 15 days. Article 47 Paragraph 3 provides that in case the party fails to pay the fee within the deadline, the party will have to pay a fine of 50% of the amount of the fee. Should the party fail to pay the fee in the given deadline, enforcement of payment shall be carried out.

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

Elka Filcheva-Ermenkova, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar

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