

**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-60/13**

**Prishtinë/Priština,  
17 October 2013**

In the proceedings of

**B.Ž**

*Appellant*

vs.

**SH.J**

*Respondent/Appellee*

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Elka Filcheva-Ermenkova, Presiding Judge, Esma Erterzi and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/R/152/2012 (case file registered at the KPA under No. KPA92483) of 19 April 2012, after deliberation held on 17 October 2013, issues the following

## JUDGMENT

1. The appeal of B.Ž against the decision of the Kosovo Property Claims Commission KPCC/D/R/152/2012, dated 19 April 2012, with regard to the claim registered with KPA under No. KPA92483 is rejected as ungrounded.
2. The decision of the Kosovo Property Claims Commission KPCC/D/R/152/2012, dated 19 April 2012, with regard to the claim registered with KPA under No. KPA 92483 is confirmed.
3. The appellant has to pay the costs of the proceedings which are determined in the amount of € 60 (sixty) within 90 (ninety) days from the day the judgment is delivered or otherwise through compulsory execution.

### Procedural and factual background:

On 17 April 2007, L.B.Ž filed a claim with the Kosovo Property Agency (KPA), as a member of family household of B.J.Ž, seeking for re-possession of the cadastral parcel nos 309/13 and 309/29. He attached the copy of the possession list no 2034 issued on 06.11.2001 by Republic of Serbia, Republic Geodesy Office, Centre for Immovable Property, Cadastre Prishtinë/Priština Immovable Property Cadastre, Office Ferizaj/Uroševac. He alleged that the possession of the properties had been lost due to the circumstances resulting from the armed conflict that occurred in 1998/99.

The respondent SH.J claimed legal rights over the parcels and signed the notification of participation. He submitted *inter alia*:

- the possession list no 2034 issued by Kosovo Cadastral Agency, dated 8 August 2007, for parcels 309/13, 309/25 and 309/29 in the name of the respondent SH.J,
- the purchase contract dated 28.10.2003 concluded between B.Ž, the alleged property right holder, and respondent SH.J verified by the Municipal Court with number 2631/03 on 29.10. 2003 (uncertified copy)

The Executive Secretariat *ex officio* contacted with A.I and B.Ž.

A.I confirmed the sale of the parcel no 309/13 to SH.J by B.Ž. He presented uncertified copy of the sale contract, dated 28 October 2003, concluded between B.Ž as the seller represented by him and SH.J as the buyer. He provided a written statement that he was present in all procedure and the contract was signed in the place called Merdare at the border by B.Ž and his son L.Ž on the one side as the seller and by A.H as the authorized person for the buyer in the presence of witness Y.H. He further stated that property right holder received € 72.000 from the brothers A. and Y.H on behalf of the respondent for the parcels no 309/13, 309/25 and 309/29. He attached the invoice dated 26.10.2003 drafted by him, as the authorized person for B.Ž, showing that full price was paid to the alleged property right holder for three parcels. He also provided a copy of the certificate, according to which the claimant withdrew claim no DS003767 (for parcel 309/13) filed with HPCC, due to the intended sale and the transfer of the same to a third person.

B.Ž confirmed that he granted the representation authority to file a claim to his son L.B.Ž due to health problems but denied the allegation on the sale of the lands. He alleged falsification and forgery of the documents shown in relation to such alleged sale.

The Executive Secretariat separated the claims seeing that parcel no 309/13 is residential one while parcel 309/29 is agricultural property. KPA92483 contains parcel 309/13 whereas KPA26474 contains parcel 309/29.

KPA established that the possession of residential parcel 309/13 was previously subject to the adjudication of the Housing and Property Claims Commission (HPCC) upon the application of B.Ž. With decision HPCC/D/153/2004/C, the Commission granted the claim to B.Ž; however, the respondent in the case at hand, SH.J, did not participate in those proceedings. The case was uncontested then.

The KPCC dismissed the claim of L.B.Ž due to lack of jurisdiction maintaining that the inability to exercise the possession of the claimed land does not derive from circumstances directly related to or resulting from the armed conflict. The KPCC noted that the Respondent contended that he bought the land from the property right holder in 2003 and submitted a purchase contract concluded between him and B.Ž dated 29 October 2003. The cadastral records were updated in the name of the respondent. KPCC decided that the claimant failed to provide evidence in support of his allegations and concluded that the matter is not within its jurisdiction.

The decision was served to the respondent on 18 October 2012 and to the claimant L.Ž on 15 January 2013, respectively. Claimant's father B.Ž, who was alleged to be the property right holder, filed an appeal on 22 January 2013.

B.Ž (hereinafter the appellant) challenged the decision of the KPCC alleging that he did not sell the property to anyone in 2003. In his appeal, he reiterated his allegations on the forgery of the purchase contract. He maintained that the purchase contract was signed by H. under the pressure of the criminal H. who sold his property to J.A. He also referred to the previous adjudication of his claim registered as DS 003767 by HPCC and relied on that the property was allocated to him with the decision of 22 October 2004 which was not executed.

The appeal was served on the respondent on 15 April 2013. He did not file a response to the appeal.

### **Legal Reasoning**

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

The Supreme Court, after the review and assessment of the submissions from the case file, the appealed decision and the allegations of the appellant, found that the appeal is ungrounded.

First of all, the appellant in his appeal refers to the previous judgment issued by HPCC with regard to the same parcel. As a matter of fact, B.Ž previously applied to HPCC asking for re-possession of the parcel no 309/19 which was allegedly lost during the conflict. HPCC in its decision of 22 October 2004 in claim no DS003767 noted that the residential property on the parcel was destroyed after the claimant lost possession of the property. According to the findings of the HPCC, the alleged property was not occupied by anyone at the time of filing of the previous claim. HPCC had decided to grant the possession to him. The ownership right over the parcel was not examined then. The case was uncontested. This subject matter does not constitute *res judicata* between the claimant and the current respondent in the case at hand since the latter did not participate in those proceedings.

Furthermore, there is no causal link between the first loss of possession of the property, if it was due to the conflict, and the second one during/after the adjudication of the first claim by HPCC. The second one derives from an alleged purchase contract regardless of its validity.

In the case at hand filed with KPA, the respondent claimed that he bought it from B.Ž in 2003 which was denied by the appellant with the allegation of falsification of the documents and forgery. The Supreme Court is to find out whether KPCC had jurisdiction under these conditions.

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 due to the circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.

It is not contested between the parties that B.Ž was the property right holder till 2003. The respondent claims that he bought the parcel 309/13 from the property right holder in 2003. The sale of the property allegedly took place on 28 October 2003 between B.Ž and the respondent meaning quite some time after the conflict (the KPA documents in the file refer to dates of 26.10.2003 or 29.10.2003 in some reports or decision but all intend to mean the same alleged contract). The KPA *ex officio* contacted with A.I, the alleged representative of B.Ž, who confirmed this sale. As the appellant stands, the possession of the land by the respondent derives from signature of a contract under pressure and forgery. The appellant did not present any evidence to this end nor initiated a complaint with the prosecution office for his allegations in this regard. Nevertheless, whether the contract is legally valid is not relevant in these proceedings. The allegation on forgery cannot be examined by KPCC or the Supreme Court herein. The alleged contract, regardless of whether it is forged one or not, bearing the date of 28 October 2003 indicates that the dispute at hand between parties is not directly related to or resulting from the armed conflict that occurred in Kosovo in 1998/99. This is the relevant fact to take into account now as to the jurisdiction of the KPCC. The contested matter between the parties whether the contract of 2003 is forged or signed under pressure does not fall within the jurisdiction of the KPCC since it has no direct link with the armed conflict.

The Supreme Court considers that the decision of KPCC was correct as to dismissing the claim within the limits of jurisdiction and competence of KPCC pursuant to Article 11.4.c of the UNMIK Regulation No 2006/50, as amended by Law No 03/L-079 and is to be upheld.

Based on the aforementioned and in pursuant to Section 13.3.b. of the UNMIK Regulation No 2006/50, as amended by law No 03/L-079 and Article 166, paragraph 2, of the Law on Contested Procedure, it is decided as in the enacting clause of this judgment.

### **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 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 (section 10.21, 10.15 and 10.1 of the AD 2008/2): 30 €.

These court fees are to be borne by the appellant who loses the case. According to Article 45.1 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. Article 47.3 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 within 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.

**Elka Filcheva-Ermenkova, EULEX Presiding Judge**

**Sylejman Nuredini, Judge**

**Esma Erterzi, EULEX Judge**

**Urs Nufer, EULEX Registrar**