

**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-61/13

**Prishtinë/Priština,
12 November 2013**

In the proceedings of

B.Ž

Appellant

vs.

E.J

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/A/149/2012 (case file registered at the KPA under No. KPA26474) of 19 April 2012, after deliberation held on 12 November 2013, issues the following

JUDGMENT

1. The appeal of B.Ž against the decision of the Kosovo Property Claims Commission KPCC/D/A/149/2012, dated 19 April 2012, with regard to the claim registered with KPA under No. KPA 26474 is rejected as ungrounded.
2. The decision of the Kosovo Property Claims Commission KPCC/D/A/149/2012, dated 19 April 2012 with regard to the claim registered with KPA under No. KPA 26474, is confirmed.

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 no. 309/13 and 309/29. He attached the copy of the possession list no 2034 issued on 06 November 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 8317 issued by Kosovo Cadastral Agency, dated 2 March 2004, for parcels 309/25 and 309/29 in the name of the respondent SH.I.J as well as the possession list no 2034 issued on 8 August 2007 for three parcels, including 309/29, registered under the name of SH.J,
- the purchase contract dated 30 January 2004 concluded between B.Ž, the alleged property right holder, and respondent SH.J which was verified by the Municipal Court in Ferizaj/Uroševac on 4 February 2004 (uncertified copy).

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.

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

A.I, acting as the representative of B.Ž in the sale process, confirmed the sale of the parcel no 309/29 to SH.J by B.Ž. He presented uncertified copy of the sale contract, dated 30 January 2004, concluded between B.J.Ž as the seller and SH.I.J as the buyer. He submitted the copy of the power of attorney granted by B.Ž to A.I for signing the sale contract for the cadastral parcels no 309/13, 309/25 and 309/29. He attached the invoice dated 26 October 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.

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 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 alleged that he bought the land from the property right holder in 2004 and submitted a purchase contract concluded between him and B.Ž. The cadastral records were updated in the name of the respondent SH.J who later on sold the property to his brother E.J with a purchase contract No 2006/5 concluded between him and his brother dated 7 June 2005. SH.J claimed joint interest on the parcel with his brother and stated that this is the reason why his name appeared on the papers. The Executive Secretariat *ex officio* found that the claimed property (parcel no 309/29) is registered in the cadastral records, in the certificate for the immovable rights No 2034 dated 11 May 2008 and 10 April 2010 in the name of the respondent's brother E.J.

The KPCC decision was served to the respondent on 5 December 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 or 2004. 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.

The appeal was served on the respondent on 18 April 2013. E.J, the brother of SH.J, filed a response to the appeal on 25 April 2013. In the response, E.J alleged that he and his family members bought the parcel no 309/29 from B.Ž. He also stated that the authorization given by the seller to the lawyer A.I to sign the sale contract was certified by the Municipal Court in Niš with the official number II. VE. No. 7000/2003 dated 1 October 2003.

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.

In the case at hand, the respondent claimed that he bought it from B.Ž in 2004 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 2004. The respondent claims that he bought the parcel 309/29 from the property right holder in 2004. The sale of the property allegedly took place on 30 January 2004 between B.Ž and the respondent meaning quite some time after the conflict. The KPA *ex officio* contacted with A.I, the alleged representative of B.Ž, who confirmed this sale. The cadastral records verified by the KPA lists the said parcel under the name of E.J. 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 30 January 2004 indicates that the

dispute at hand is not 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 2004 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.

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