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-144/13

Prishtinë/Priština,
27 February 2014

In the proceedings of

A. M.
K.

Appellant

vs

D. S.
S. R.
L./L.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Elka Filcheva-Ermenkova, Presiding Judge, Dag Brathole and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/170/2012 (case file registered at the KPA under number KPA31499), dated 24 October 2012), after deliberation held on 27 February 2014, issues the following

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JUDGMENT

1- The decision of the Kosovo Property Claims Commission KPCC/D/A/170/2012 (case file registered at the KPA under number KPA31499), dated 24 October 2012 is annulled and the claim of D. S.(KPA31499) is dismissed as it does not fall within the scope of jurisdiction of the KPCC.

Procedural and factual background:

1. On 3 August 2007, D. S. (hereinafter the claimant), as a family household member of the property right holder D. M. D., filed a claim with the KPA for the repossession of a property described as a field with surface of 66 ar and 84 sq. m., parcel number 268 in Staro Ruje, Lipjan/Lipljan. She stated that the property is occupied by an unknown person.
2. She submitted possession list under the name of her late father who died on 9 September 1996[1]. The KPCC verified positively the documents. In the course of the communication with the Executive Secretariat of the Commission the claimant stated that her father sold a parcel once upon time but she was not able to specify which.
3. The KPCC notified potential interested parties by placing notification signs in the property on 13 February 2008. Following that on 10 June 2008 it issued a positive decision in favor of the claimant. Afterwards the Commission established that the notification was wrong and invalidated the issued decision – KPCC/RES/17/2010 from 8 March 2010. The notification procedure was repeated but this time with publication in the KPA notification gazette on 27 August 2010. To this one which no one responded.
4. With decision KPCC/D/A/170/2012 (case file registered at the KPA under number KPA31499), dated 24 October 2012 the Commission found the claim as grounded in the name of the property right holder D. D.. There are no specific arguments related to the relevant claim under No KPA31499 as it was decided along with 108 other claims (paragraph 16 of the decision) in which it was established that there is evidence for the property right holder to have been the owner of the properties at stake.
5. The decision was served on the claimant on 18 March 2013.

[1] Possession list number 40, issued by the Municipality in Lipjan/Lipljan (Geodesic department) on 3 August 2007 and death certificate, number 203-19/08-8-176, issued by the same Municipality.

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6. On 11 June 2013 A. M. (hereinafter the appellant) filed appeal against the decision claiming that he (his family) has purchased the parcel in question in 1995 and they use it ever since. He claims they have paid all the monetary obligations originating from the contract. In support of his allegations the appellant presented a written contract regarding the purchase of the disputed parcel . D. D. was the seller. M. B. was the buyer. The contract has no date and the signatures are not certified in a Court. The appellant also presented a document (obviously claim) from court proceedings, dated 24 September 1996. The subject of the dispute was the establishment of the existence of the same contract and some monetary compensation. One of claimants in 1996 was D. D.one of the respondents was M. R.. There is no data how this claim was decided back then.

7. The appeal was served to the claimant/now appellee who responded that *"it is true that my father D. D. sold this land plot No. 268, total area of 66,85 acres to A. M.. This was a verbal agreement. He did not make any written agreement nor has anything in written form being verified at the court in the sense of the sale of the aforementioned land plot…There was an agreement to pay the money to my father in a number of installments and in cash. However, following an agreement with witness number 3, N R., A. M.was making payments directly to the latter. My father was unable to stop these criminal activities, partly because he was old and partly because of threats made to him by the aforementioned persons"*. Later she continues: *"I demand that A.M. should pay to me as successor a sum in euro which is equivalent to 17 500 DM and pay it directly to me…I would conclude a contract after this and carry out the transfer. In this case A. M. would see a compensation for this money from N. R."*.

Legal Reasoning

8. The appeal is admissible although the appellant has not been a party in the proceedings before the KPCC. This circumstance cannot go to his detriment as he had not been correctly notified of the claim. The notification was done by publication of the claim in the Notification Gazette of the KPA. This, however, constitutes "reasonable efforts" to notify of the claim only in exceptional cases. Such an exception cannot be found in this case. As the Court cannot exclude that the appellant was not aware of the claim, he has to be accepted as a party to the proceedings - his appeal is admissible.
9. However the Court shall not contemplate on the merits of the appeal because the decision of the KPCC had to be annulled *ex officio*. The case does not fall within the jurisdiction of the KPCC and this Court (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 on the resolution of

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claims relating to private immovable property, including agricultural and commercial property as amended by Law No. 03/L-079. According to art. 198 (1) LCP if the first instance has taken a decision over claims which do not fall within its jurisdiction the court of second instance has to annul the decision and dismiss the claims.

10. According to Section 3.1 of UNMIK/REG/2006/50 as amended by Law No. 03/L-079, a claimant (who has proven to be the owner) is entitled to an order from the Commission for repossession of the property in case he/she is not now able to exercise the 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".*
11. The text clearly explains that the purpose of this special law (*lex specialis*) 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 other property related disputes, which are in no way related to the armed conflict; neither is it an instrument for monetary compensation for damages.
12. In the current case it is not disputed that the father of the claimant did not lose possession over the property because of the war of 1998/1999.
13. He had an informal arrangement with the family of the appellant and he handed over the possession in 1996. The claimant does not dispute that the family of the appellant – M.made payments related to this informal arrangement, but those payments were made in favor of a third person. This confirms the conclusion that the loss of possession occurred before the war – in 1996 and was in no way related to it. The same conclusion is concurred by the fact that in 1996 there were court proceedings initiated in relation to this informal arrangement – meaning there was a dispute even in 1996.
14. The informal arrangement (the contract) of 1996 did not transfer any rights (as correctly observed the claimant, now appellee), but the inability the right to be exercised now and after 1999 is not related to the war. It comes from unresolved issues/disputes between the family of the claimant and the family of the appellant which existed from before 1998. Those disputes, either for the property right itself or for monetary compensation have to be decided either by the parties themselves or in case voluntary agreement is impossible by the regular court system in Kosovo.

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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

Dag Brathole, EULEX Judge

Sylejman Nuredini, Judge

Holger Engelmann, EULEX Registrar

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