

**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-191/13

**Prishtinë/Priština,
16 April 2014**

In the proceedings of:

M.M

Appellant

vs.

L.G

Claimant/ Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Esma Erterzi, Presiding Judge, Willem Brouwer and Erdogan Haxibeqiri Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPPC/D/R/181/2012 (case file registered at the KPA under the number KPA00651), dated 14 December 2012, after deliberation held on 16 April 2014, issues the following:

JUDGMENT

1. The appeal of M.M against the decision of the Kosovo Property Claims Commission KPPC/D/C/97/2010, dated 7 December 2010, is accepted.
2. The decision of Kosovo Property Claims Commission KPPC/D/R/181/2012, dated 14 December 2012 regarding the claim registered at the KPA under the number KPA00651, is annulled as rendered in the absence of jurisdiction.
3. The claim of the claimant is dismissed as inadmissible as it regards the claim registered at KPA00651.

Procedural and factual background:

1. On 2 April 2007, the claimant L.G filed a claim with Kosovo Property Agency seeking repossession of the parcel number 468/28, together with two houses constructed there, in the cadastral zone of Klinë/Klina, in the Municipality of Klinë/Klina, in the place called “Thaniste” with the surface of 155,110 meter square.
2. Together with the claim, she did not submit any document to show her ownership title over the claimed property; however, she submitted:
 - a copy of the claim filed before the Municipal Court in Klinë/Klina by H.A.G against S.P.K in relation to the cadastral parcel number 468/1 in the place called Thaniste with surface of 0.00.40 ha out of the total surface 1.25.66 ha as described in the possession list no 94 CZ Klina, bearing the date of 19.10.2004;
 - a copy of the claim filed by S.K against the alleged usurper M.M before the Municipal Court of Klinë/Klina, dated 1 November 2005, asking the Court for the annulment of the contract on sale certified before the Municipal Court of Kragujevca Ov.nr. 4243/03 of 16.07. 2003.
 - a copy of the authorization given by S.K to L.G to take all actions before the Municipal Court of Klinë/Klina in the lawsuit filed against M.M for the annulment of the contract on sale certified before the Municipal Court of Krugujevca Ov.nr. 4243/03 of 16.07. 2003.
 - a copy of the marriage certificate indicating her husband’s name as H.G.
 - a copy of the power of attorney given by S.K to H.G for free disposal of parcel number 468/1 in the surface of 7 Ar. 40 meter, dated 1 November 2005.
 - the statement of H.G asserting that he built the two houses on the land which he had to leave on 13 the July 1999; and that the houses were occupied by M.M illegally; that he never sold the house to this person.

- statements given by S.K and the authorizations to M.M as to the sales contract and the testimony given to the public prosecutor.
3. The claim was registered at the KPA under KPA00651. KPA notified the claim.
 4. On 6 February 2009, the occupant M.M filed a notice of participation and presented the certificate no UL-71006024-00961 issued on 22 November 2007 by the Municipal Cadastral Office of Klinë/Klina. This copy of the certificate establishes that the cadastral parcel number 468/2, the subject matter of the claim, is registered under his name. As the basis of the registration, he submitted a purchase contract made on 21 July 2003 between the representative of S.P.K (M.M) and M.M. The subject matter of the purchase contract is defined as “the part of the cadastral parcel with a surface of 0.09.44 ha in the Municipality of Klina where she built two houses which currently are demolished in the plot located in the cadastral no 468/1, in the place called Drenje with culture pasture of 3rd class, with a total surface of 1.25.66 ha which is evidence in the possession list no 94, cadastral zone of Klina”. Vague expressions are used as to the subject matter of the contract. These documents are positively verified by the KPA.
 5. On 22 July 2011, KPA team visited the property. D.M, the mother of M.M, stated that they bought the land in 2003 and her son already contacted with KPA.
 6. On 14 December 2012, Kosovo Property Claims Commission (KPCC), through its Decision KPCC/D/R/181/2012, granted the claim to the claimant.
 7. On 28 May 2013, the Decision of the KPCC was served on M.M. He filed an appeal on 25 June 2013.
 8. The appeal was served on the claimant on 30 September 2013. She did not file a response to the appeal.

The allegations of the parties:

The Claimant/Appellee

9. In the claim filed with the KPA, the name of the property right holder is stated as L.G. She alleges that the loss of the possession derives from the armed conflict conditions. The date of loss is stated as 12 June 1999. She claims that the land was usurped by M.M after she left to Montenegro and subsequently to Germany based on fake documents on purchase and authorization from the registered owner S.K. She did not file the claim as a member of the family household of H.G. The supporting documents submitted with the claim refer to H.G as the property right holder.
10. As to the reason why the land had not been registered under her name or her husband’s name, she simply says that the laws of those times do not allow the sales between the parties. She is silent on whether a written contract has ever been made.

The claimant/Appellee’s husband

11. H.G, in his statements mentioned that the land was bought by him from S.K. The year of the purchase is mentioned either as 1983 or 1993 in separate documents issued by him. He is also silent whether a contract has ever been concluded with S.K.

The respondent

12. The respondent has allegations in his notice of participation as to the merits of the claim as well as allegations in his appeal filed against the Decision of the KPCC. These allegations will be reflected separately.
13. In the notice of participation, M.M claims an ownership title over the cadastral parcel number 468/28. He relies on the cadastral certificate which indicates the registration of the said parcel under his name. He alleges that he bought this parcel from the registered owner S.K in 2003 based on the authorization no 4243/03, dated 16 July 2003, which was certified by the Municipal Court in Kragujevca.
14. In his appeal, first of all, he challenges the Decision of the KPCC from a procedural aspect claiming that he was not given an opportunity to respond the arguments of the claimant.
15. He further contests the ascertainment of the KPCC on that the claimant purchased the property without being proven with documentary evidence. He stresses that there was no written contract between the claimant and the seller as required by law. He emphasizes that the sales contract for an immovable property is required to be verified at the competent body; otherwise, the sales is not valid and lawful.

The third party

16. The previous registered owner S.K initially denies existence of a sales contract between her and the respondent. She admits that she sold the land to H.G, the claimants' husband, without buildings on it and transferred the land to his possession in 1991. She alleges that the buyer H.G built two houses over the parcel. Initially, she alleged the so-called proxy given by her, which was the basis of such sales contract made with the respondent, is a forged one, thus the registration of the land in the cadastral books under the respondent's name does not produce any legal effect.
17. However, later on, in her testimony given to the public prosecutor on 31 August 2010, she admits that, in fact, she issued an authorization to M.M. She does not deny the authenticity of the authorization given to M.M2, who concluded a sales contract with M.M2. Instead, she alleges that M.M2 had misused of her authorization given to him.
18. She had already asked for the annulment of that sales contract before the Municipal Court in Klinë/Klina in 2005.

Legal reasoning

Before examining the appeal, the Supreme Court takes a note of the following:

19. In some documents and statements; the year of the alleged purchase of the claimant refers to 1983 whereas in some others as 1991 or 1993. Moreover, the names of the parties are mentioned in different ways in various documents but the Court considers it as just a matter of spelling at different times depending on of the letters used for their spelling. No objection is made by the parties neither to the name of any party nor to the years.
20. The fact that at the time of the conclusion of the contract (2003) on which the respondent relies, the cadastral parcel number 468/28 was registered in the name of the third party, S.K, is not contested by any parties, either.
21. The contestation among the parties at trial level is as follows: the claimant challenges the authenticity of the contract concluded between the respondent and S.K. She claims that the contract is a fake. Whereas the third party challenges the contract due to the lack of free will for conclusion of such a contract, based on the argument that the proxy given by her was exceeded by her representative. The respondent, on the other hand, contests the existence and/or validity of a purchase allegedly made between the claimant and the third party due to lack of compliance with formalities as required by law.

Admissibility of the appeal

22. The appeal was filed within 30 days as foreseen by Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 (hereinafter, Law 03/L-079). The Supreme Court has jurisdiction over the appeal against the decision of the KPCC. The appeal is admissible.
23. Whether the KPCC had jurisdiction to discuss the merits of the claims of the claimant and the notice of participation of the respondent is at stake. The jurisdiction of the KPCC is a matter that the Supreme Court is to check *ex officio*.

Jurisdiction of the KPCC

24. According to Article 3.1 of the Law 03/L-079, the KPCC has the competence to resolve conflict related claims involving circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999. Thus, a claimant is not only to provide an ownership title over a private immovable property but also to show 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. Both conditions are to be met.
25. If the claim was only related to the loss of the possession of the claimant due to the conflict, KPCC might have jurisdiction to examine the claim of the claimant. The KPCC however has no jurisdiction when the loss of possession is due to a contract made after the conflict, as the respondent alleges.
26. Even if the claimant was the possessor of the land before the conflict and lost it during the armed conflict, such a causal link with the armed conflict is cut due to a contract made between

the registered owner and the respondent after the war. The respondent filed a notice of participation and the matter became contested. The possession of the land by the respondent does not derive from the facts before the armed conflict or related to the conditions of the armed conflict but an alleged legal act made between him and the registered owner in 2003. He presents a contract and a certificate indicating the registration under his name. Whether such registration under the respondent's name does not meet the requirements of the laws is an administrative matter. Accordingly, the KPCC should have dismissed the claim of the claimant due the lack of jurisdiction.

27. The Supreme Court notes, pursuant to Section 2.2 of UNMIK Administrative Direction No 2007/5 on the Implementation of UNMIK Regulation No 2006/50, where KPCC finds a claimant to be entitled to reinstatement as a holder of a property right, the Commission shall authorize reinstatement in kind unless the ownerships of the property has been acquired by a natural person through a valid voluntary contract before the date this Regulation entered into force. This provision implies that Commission cannot do so where there is a valid contract made after the conflict.
28. The issue at stake here is whether the contract presented by the respondent, who participated in the proceedings claiming ownership right, is a valid and voluntary contract. In this regard, the Supreme Court notes that the validity of that contract had already been a subject matter of previous proceedings before the Municipal Court in Klinë/Klina which was filed in 2005 (C.br.161/2005). Those proceedings were pending at the time of filing of this claim at hand (2 April 2007). The minutes of the hearing submitted indicate that Municipal Court in Klinë/Klina had already started with adjudication of that claim. Thus, Section 18 of Law 03/L-079 comes into the light here.
29. Pursuant to Section 18 of Law 03/L-079, the provisions of this law do not apply to such claims commenced prior to the date of entry into force of the UNMIK Regulation No 2006/50. Thus, the KPCC does not have jurisdiction to examine the validity of such a contract which was very crucial for the proceedings at hand. Furthermore, the cadastral parcel is registered under the name of the respondent. Whether such registration lacks a legal basis is not within the jurisdiction of the KPCC, either. KPCC could not have disregard the fact that the cadastral parcel 468/28 was registered in the Cadastre under the name of the respondent by taking a position that contract does not refer to this parcel. While doing so it exceeded the limits of its competence. In case that the contract submitted by the respondent to the cadastral office does not cover the parcel no 468/28 but only 468/1, such a wrong registration can be challenged within administrative proceedings. If the contract does cover the parcel 468/28 but lacks the free will of one of the contractor, that contract can be challenged before an ordinary court based on the Law on Contracts and Torts as already been done.

30. The fact that the parties in those proceedings are different does not affect this result because both parties rely on their contract with the previous registered owner S.K. They would be the legal successor of this third party which would affect their position as well. She is a party in two proceedings adjudicating the claims filed before the Municipal Court in Klinë/Klina; one of which is filed the claimant's husband against her in 2004 and the other one by her against the respondent M.M. The dispute between the claimant and the respondent mainly depends on the outcome of the previous proceedings between each of them and third party. The validity of the contract and scope of such contract the respondent presented and whether the registration of the land in the cadastral books under the name of the respondent lacks legal basis exceeds the mandate of KPCC since it has no direct relation to the conditions of the armed conflict. Therefore, KPCC decided on a dispute which is beyond its mandate which would lead to the ineffectiveness of the outcome of the previous proceedings if the competent Court adjudicating the claim of S.K rejects the claim and considers the contract between her and respondent as a valid and binding one.
31. The Supreme Court considers that the KPCC rendered the Decision in the absence of the jurisdiction. The Decision is annulled pursuant to Article 13.3 (a) of Law 03/L-079. Accordingly, the claim is dismissed as inadmissible since the KPCC lacked jurisdiction over the dispute between the parties pursuant to Section 3.1, 13.3 (a) and 18 of the Law 03/L-079.

Legal Advice

32. Pursuant to Section 13.6 of Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Esma Erterzi, EULEX Presiding Judge

Willem Brouwer, EULEX Judge

Erdogan Haxibeqiri, Judge

Urs Nufer, EULEX Registrar