

**SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA**

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË AKP-ës
ŽALBENO VEĆE KAI**

GSK-KPA-A-101/13

Prishtinë/Priština,

23 April 2014

In the proceedings of

B.B

Appellant

vs.

L.R

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Dag Brathole, Presiding Judge, Elka Filcheva – Ermenkova and Erdogan Haxhibeqiri, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/R/166/2012 (case file registered at the KPA under the number KPA90497) dated 5 September 2012, after deliberation held on 23 April 2014, issues the following

JUDGMENT

The decision of the Kosovo Property Claims Commission KPCC/D/R/166/2012 (case file registered at the KPA under the number KPA90497) dated 5 September 2012 is annulled and the claim of L.R for private property is dismissed due to lack of jurisdiction.

Procedural and factual background

1. On 17 May 2007 L.R filed a claim with the Kosovo Property Agency (KPA), seeking ownership of parcel no. 1556 and 1567 in Mitorvicë/Mitrovica, total area of 691 m², cadastral zone Mitorvicë/Mitrovica, unsigned possession list no. 856, allegedly issued by the Department for Cadastre, Geodesy and Property of the municipality of Mitorvicë/Mitrovica. As proof of ownership he submitted, among other documents, a purchase contract between the social trading company Lux/Luks and him dated 5 April 1993, concerning the purchase of a 77 m² apartment in Ramiz Sadiku Street in Mitorvicë/Mitrovica. The claim was given number 00806.
2. In the claim L.R stated that his property right to the immovable property was lost on 1 June 1999 as a result of the circumstances in 1998/1999.
3. During its handling of the claim, the KPA established that the two parcels were not adjacent. The KPA therefore divided the case. Case no. 00806 concerned parcel no. 1556, while the case concerning parcel no. 1557 was given the number 90497. The appeal pending before the Supreme Court concerns case no. 90947.
4. B.B responded to the claim on 2 October 2009, stating that he was the owner of parcel 1567, and stating the surface of this property to be 691 m².
5. During the preparation of the case before the KPA it was established that the building on the parcel 1567 had been demolished, and that a new seven-story apartment building had been constructed on the property.
6. On 5 September 2012 the Kosovo Property Claims Commission by its decision KPCC/D/R/166/2012 (case file registered at the KPA under the number KPA90497) awarded the claim of ownership of the apartment on the disputed property. In the Certified Decision dated 27 February 2013, which refers to KPCC/D/R/166/2012 (case file registered at the KPA under the number KPA90497), it is stated that L.R has been awarded ownership of parcel nr. 1567, but it follows from the reasoning in the cover decision itself (paragraphs 17 to 20), that the decision is limited to the apartment of 77 m².
7. The decision was served on B.B on 20 March 2013. On 16 April 2013 Brahimi, through his lawyer Z.N.A filed an appeal to the KPA Panel of the Supreme Court of Kosovo. The appeal was served on L.R on 30 July 2013. He did not reply to the appeal within the 30 days deadline set by the KPA.

8. The Supreme Court received the case-file on 12 February 2014.

The allegations of the parties

9. B.B alleges that the decision of the KPCC involves a fundamental error or serious misapplication of applicable material and procedural law, and that the decision rests on an erroneous or incomplete determination of the facts.
10. B.B has purchased parcel 1567 from V.A by sale contract no. 3417/05 dated 21 September 2005 by with signatures verified at the municipal Court in Mitorvicë/Mitrovica. He has also transferred this immovable property in his name at the Directory of Cadaster and Geodesy in Mitorvicë/Mitrovica. This is confirmed by certificate on immovable rights UL – 7120872-00756 over cadastral parcels no. 1556 and 1567 CZ Mitorvicë/Mitrovica. He is therefore the owner of the property.
11. There was no building on the property, as alleged by L.R, only a private house with a yard, as reflected in possession list no. 865 CZ Mitorvicë/Mitrovica.
12. There were no irregularities in the transfer of property from V.A to B.B. The transfer was conducted in accordance with the relevant legislation.
13. L.R has not responded to the appeal. Before the KPCC he stated that he had bought the apartment on Ramiz Sadik Street from his employer DD LUX in 1993. The company had bought the property from the A. family in 1993, but the sale was never registered in the cadaster. L.R has submitted a sales contract, where the signatures have been confirmed by the Municipal court of Mitorvicë/Mitrovica.
14. In 2005 L.R learnt that the parcel no. 1567 had been sold to B.B, and that the building in which his apartment was situated, had been demolished. A new building was later constructed by B.B.
15. After this L.R contacted V.A, who knew nothing about the property. L.R alleges that V.A was forced by her son-in-law, D.S to give H.B authorization to sign a contract on purchase of the property.
16. L.R asks the KPCC to determine and confirm his ownership

Legal reasoning

Admissibility of the appeal

17. The appeal is admissible because it has been filed within 30 days as foreseen by Section 12.1 of UNMIK Regulation 2006/50 on the Resolution of Claims relating to Private Immovable Property, including Agricultural and Commercial Property as amended by Law No. 03/L-079 (*hereinafter Law No. 03/L-079*).

Jurisdiction

18. The Supreme Court notes that L.R has submitted a purchase contract dated 5 April 1993 in which it is stated that he has bought an apartment from the Social Trading Company “Luks”. The signatures on the contract have been positively verified by the KPA, who has also established that this apartment was in a house on parcel no. 1567 in Mitrovicë/Mitrovica. L.R has alleged that the company “Luks” bought parcel no. 1567 from V.A, but that the transaction was never registered.
19. On the other hand The Supreme Court notes that B.B has submitted cadastral documents which show the cadastral history of parcel 1567, and which show that he is the registered owner of the parcel.
20. The Supreme Court finally notes that the KPA has stated that it has been in contact with Privatization Agency of Kosovo (PAK), who has allegedly confirmed the existence of a residential property on parcel 1567 which belonged to the socially enterprise “Luks”. However no evidence of this ownership has been submitted and no information relating to the ownership has been given.
21. Two important issues in the dispute between the parties are therefore
- whether the company “Luks” did indeed have ownership over parcel no. 1567, and therefore was in a position to sell the apartment, which was in a house on the property, to L.R, and
 - whether B.B has purchased the property in good faith, ignorant of the fact that L.R claimed ownership of the apartment which was in the house on the property.

22. The dispute between the parties as to the ownership of the parcel and the apartment, which is described above in paragraphs 18 to 21, is an ordinary ownership dispute which is not related to the armed conflict in Kosovo in 1998/1999.
23. According to Section 3.1 of Law No. 03/L-079 the KPCC has the competence to resolve conflict-related claims concerning ownership over, or property rights to, private immovable property, including agricultural and commercial property. The KPCC only has the competence to resolve conflict-related claims directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999.
24. As the claim from L.R is an ordinary dispute over ownership, and not related to the armed dispute in Kosovo in 1998/1999, the claim falls outside the jurisdiction of the KPCC.
25. In the light of this, pursuant to Section 12.2 under (c) of Law 03/L-079 and Art. 198.1 of the Law on Contested Procedure (Law No. 03/L-006), it was decided to annul the decision of the KPCC and dismiss the claim

Legal Advice

26. Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by Law 03/L-079, this judgment is final and cannot be challenged through ordinary or extraordinary remedies.

Dag Brathole, EULEX Presiding Judge

Elka Filcheva – Ermenkova, EULEX Judge

Erdogan Haxhibeqiri , Judge

Urs Nufer EULEX Registrar