

**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-067/13

**Prishtinë/Priština,
18 November 2014**

In the proceedings of:

M. A.

Serbia

Appellant

vs.

I. I

Respondent/Apellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Judges: Willem Brouwer, Presiding Judge, Sylejman Nuredini and Esma Erterzi, Judges, deciding 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. KPA18346 dated 19 April 2012, after deliberation held on 18 November 2014 issues the following:

JUDGMENT

1. The appeal of M. A. against the decision of the Kosovo Property Claims Commission KPCC/D/A/149/2012 (case file registered with KPA under number KPA 18346) dated 19 April 2012, is rejected as ungrounded.
2. The decision of the Kosovo Property Claims Commission KPCC/D/A/149/2012, dated 19 April 2012, (case file registered with KPA under No. KPA18346) is confirmed.

Procedural and factual background:

1. On 29 November 2006, M. A., filed a claim with the (KPA) under number (KPA 18346), in the capacity of the alleged property right holder seeking repossession right of property. He alleges that his deceased father J. A. is registered owner over the claimed immovable properties.
2. To support his claim he submitted to KPA the following documents:
 - Identification card issued on 29 December 2005, by the competent body.
 - Possession list no. 501 issued by the Cadastral and Immovable Property Service of the Municipality of Prishtina (parallel body), dated 01 June 2006. With this possession list is confirmed that 1/3 ideal part of the claimed cadastral parcel is under the name of the claimant.
 - Certificate for the immovable property right, UL.71914059-0050, issued by the Cadastral Office in Prishtina, dated 31 March 2008 is identical with this possession list.
 - Copy of the Plan issued on 02.07.1987, by the competent body of the Municipality of Prishtina.
 - Judgment of the Municipal Court of Prishtina, C.nr.345/80 dated 10 March 1981.

- Ruling of the Municipal Court in Vernjacka Banja, Tno.155/01 dated 28.09.2007, wherewith is ascertained that the son of A. C., is announced as heir for 1/3 of cadastral parcel no.77/2, of meadow culture, in the surface of 0.14.20 ha, according to the possession 501 of the Cadastral Office in Prishtina
3. Verification Team of the Kosovo Property Agency according to the notification and confirmation report, has carried out the notification of this cadastral parcel dated 23 February 2012 and 24 February 2012, subject of claim. After this notification report, it is ascertained that Y. B., who claims the ownership right over this immovable property, is using this cadastral parcel.
 4. The respondent participating in the procedure alleges that he is the owner of the same cadastral parcel subject of the claim, by showing a statement dated 27.11.2007, as well as the sales contract dated 23 April 1970. Wherewith is ascertained that S. B. sold the cadastral parcel 77/2 to A. R.
 5. According to the Certificate of the Geodesy Department of the Republic of Serbia – Cadastral and Immoveable Property Service of the Municipality of Prishtina, no.952-01-04/97-2180 dated 04 Mars 1997, is ascertained that the cadastral parcel 77/1 and 77/2, on the basis of the detailed measurements performed in 1967, are registered under the name of S. B..
 6. According to the KPA verification report dated 16 September 2011 is ascertained that the possession list no.501 referring parcels 77/1 and 77/2 has been positively verified.
 7. According to the Certificate for the immovable property right UL-71914059-00501 dated 12 February 2008, cadastral parcel 77/2 was registered under the name of S. B. In the meantime, according to the judgement of the Municipal Court in Prishtina, C.nr.345/80 dated 10.03.1981, this property, on the basis of the Decision of the Cadastral Department, 011.nr.952/107 dated 23.11.2008, is registered under the name of A. M., for 1/3 ideal part of this immovable property. Based on the data of Kosovo Cadastral Office, P-41914059-00077-2 dated 02 May 2010 the immovable property subject of claim is registered under the name of the claimant for 1/3 ideal part.
 8. Kosovo Property Claims Commission (KPCC) regarding the claimed properties, with its decision KPCC/D/A/149/12 dated 19 April 2012, decided that the claim of M. A. is

rejected as impermissible, with the reasoning that his father gave the claimed property for use to S. B., who afterwards sold the same property. Based on the judgment of the Municipal Court in Prishtina, C.nr.345/80, M. A. was granted the property ownership right for 1/3 ideal part. The claimant left Kosovo in 1992. Because the property claim of the claimant was not lost as the consequence of the armed conflict during 1998-1999, as well as because of lack of jurisdiction, it rejected the same. Since the proceedings related to the claimed property were initiated in 1980 and pursuant to Section 18 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, it rejected the claim due to the lack of jurisdiction.

Appealed allegations:

9. Appellant M. A., with his filed claim alleges that the appealed decision involves erroneous determination of factual situation, misapplication of Section 3 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 and of Law on Contested Procedures; therefore he motions to the Court to amend the same decision and to grant her claim.
10. M. A. received the appealed decision on 26 November 2012, whereas he filed an appeal on 21 December 2012. The appealed decision was served on Y. I. on 21 December 2012 and he did not file any response to appeal.

Legal reasoning

Admissibility of appeal:

11. The Supreme Court after the review and evaluation of the appealed decision and of filed appeals pursuant to Article 194 of LCP, found that:

The appeal is admissible, but ungrounded.

Is not contested that:

12. Between litigants - claimant and respondent – the appeal is not contested that the father of claimant has given for use to S. B., the cadastral parcel 71/2.

13. Cadastral parcel subject of the claim, according to the Certificate of the Cadastral and Immovable Property Service, nr.952-01-4/97-2180 dated 04 March 1997, is registered under the name of S.B., from 1967. In addition, this cadastral parcel according to the Certificate on the Immovable Property Rights, UL-71914059-00501 dated 02 December 2008, was registered under the name of S. B.
14. Based on the sales contract dated 23 April 1970, S. B. sold to A. R. the immovable property 77/2 (respondent's uncle).
15. According to the judgment of the Municipal Court of Prishtina, C.nr.345/80 dated 10 March 1981, the claimant was granted the property right for the 1/3 ideal part of the cadastral parcel 77/2, and these changes were indicated in the unit Base data, dated 02 May 2010.
16. Claimant confirms that the houses in this cadastral parcel were built before the conflict, and they left Kosovo in 1992, respectively in 1995. In the meantime, respondent alleges that in this cadastral parcel were built certain houses when the immovable property was purchased.
17. According to the administered evidence and confirmed facts, the Supreme Court of Kosovo finds that, the appealed decision related to the case facts and applicable law, is correct and lawful, when deciding that the claimant's claim is to be rejected due to the lack of jurisdiction. Since the loss of possession of claimant is not because of circumstances directly related to or resulting from the armed conflict that occurred in 1998-1999.
18. Claimant has also confirmed that he did not have the property under possession since 1992 when they moved from Kosovo.
19. Therefore, it could be concluded as he alleges that they were not displaced from the claimed property or did not lose the possession or the control over such property because of the conflict.
20. Moreover, because according to the Certificate on Immovable Property Rights dated 02 December 2008 and Certificate dated 04 March 1997, that property was registered under the name of S.B.
21. In the light of the foregoing, the Supreme Court of Kosovo evaluates that like the factual determination, also the legal conclusion of the appealed decision is correct and lawful, and pursuant to provision of Section 13 par.3 sub-para (c) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 is therefore decided as in the enacting clause of the ruling.

Legal Advice:

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

Willem Brouwer, EULEX Presiding Judge,

Sylejman Nuredini, Judge

Esma Erterzi, EULEX Judge

Urs Nufer, EULEX Registrar