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-016/14 **Prishtinë/Priština**

2 December 2014

In the proceedings of

G. B.

Sllovi

Appellant

vs.

Z. J.

Kragujevac, Serbia

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Willem Brouwer, Presiding Judge, Esma Erterzi and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/22/2008 (case file registered at the KPA under the number KPA42232), after deliberation held on 2 December 2014 , issues the following

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JUDGMENT

1. **The appeal of G. B. against the decision of the Kosovo Property Claims Commission KPCC/D/A/22/2008 (case file registered as KPA42232) dated 28 August 2008 is accepted as grounded.**

2. **The decision of Kosovo Property Claims Commission KPCC/D/A/22/2008 (case file registered as KPA42232), dated 28 August 2008 is annulled due to withdrawal of the claim and the claim of Z. J. registered as KPA42232 is dismissed.**

Procedural and factual background:

1. On 18 September 2007 Z. J. (henceforth: appellee) acting on behalf of his late mother, C. J. filed an ownership claim with the Kosovo Property Agency (KPA) seeking for repossession as well as compensation for the property usage without his consent of a parcel no. 2981, located in the Municipality of Lipjan/Lipljan cadastral zone Sllovi/Slovinje, with a surface of 00.19.82 ha (henceforth: the claimed property). The Appellee asserted his mother lost possession over the property due to the circumstances of the conflict in Kosovo on 16 June 1999.
2. In support of his claim he has submitted

- The Possession List No.2 issued by Cadastral Office of the Municipality of Lipjan/Lipljan. According to the Possession List parcel no .2981, 4th class cultivated land with the surface 00.19.82 ha is registered on the name of C. J.

3. On 10 April 2008, a KPA Team went to the property and put up a sign notifying the claim. In its notification report, the KPA Team noted that the property was cultivated land occupied by a unknown person. Since the claimed property was found used, the KPA Team tried to identify the person who is using the property but unsuccessfully as local people did not know or did not want to tell about the person who is using the same. The notification for the property was checked in February 2010 based on GPS coordinates and ortophoto and found to have been properly done.
4. Since no respondent filed a reply within the deadline, the claim was considered as uncontested.

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5. By its decision of 28 August 2008 (KPCC/D/A/22/2008), the Kosovo Property Claims Commission (KPCC) decided that appellee had established that his late mother C.J. was the owner of the claimed property and as such appellee was entitled to possession of the claimed property.
6. Appellee did not collect the KPCC's decision within the deadline for collection of the decision.
7. On 11 December 2013 appellant filed an appeal against the decision of the KPCC.
8. The appellant provided the KPA with a Purchase Contract, concluded between S.J. as seller of the claimed property and B. B. in a capacity of the buyer.
9. On 23 January 2014, the appellee filed a written response to the appeal. In his written response the appellee declared as follow :

   "I Z. J. hereby confirm that my brother, S. J. sold parcel no. 2981, with surface of 00.19.82 ha, to B. B. approximately during the 1990ies. It was my mistake that when submitting the claim before the KPA, I erroneously submitted the claim, and afterwards did not withdraw that same duly. I hope that you will accept my apology.

   The appellee requested also for Closure of the KPA claim.

Allegations of the appellant

10. Appellant challenges the decision due to erroneous and incomplete determined facts. He states that his deceased father, B. B. has bought the claimed property and it is in use by them since the moment of the purchase.

Legal reasoning:

Admissibility

11. The appeal is inadmissible if the appellant had not taken part in the proceedings before KPA, unless appellant is an interested party who did not receive a (proper) notification of the claim or otherwise was not aware or reasonably could not be aware of the claim before he filed the appeal (Section 12.1 of the UNMIK Regulation 2006/50 on the Resolution of Claims relating to Private Immovable Property, including Agricultural and Commercial

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Property as amended by Law No. 03/L-079 and see for instance judgement GSK-KPA-A-095/12).

12. There is no indication that the appellant was informed of the proceedings before KPA during the notification process or until December 2013. Therefore the appeal is admissible. There is also no doubt that appellant is an interested party.

Merits

13. Appellee by his statement mentioned in paragraph 8 of this judgment states he would have liked to withdraw his claim before KPCC and states the KPCC Decision is wrong.
14. According to articles 149, 198 and 261 of the Law on Contested Procedure withdrawal of a claim implies that the claim should be rejected or dismissed.. This provision can, as Section 12.2 of Law 03/L-079 applies, mutatis mutandis be applied in this procedure before the KPA Appeals Panel.
15. In the context of the proceedings in front of the KPA Appeals Panel this means that the Court has to accept the appeal and conclude that C.J. is not the owner and appellee does not have a right for repossession. The Supreme Court annulled the appealed decisions, by dismissing the claim.

Legal Advice

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

Willem Brouwer, Presiding Judge

Esma Erterzi, EULEX Judge

Sylejman Nuredini, EULEX Judge

Urs Nufer, EULEX Registrar

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