

**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-273-13

**Prishtinë/Priština,
20 December 2014**

In the proceedings of:

Z. G.

Beograd
Serbia

Appellant

vs.

S. S.

Podujevë/Podujevo

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Rolandus Bruin and Krassimir Mazgalov, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/156/2012 dated 06 June 2012 (case file registered at the KPA under No. KPA13146), after deliberation held on XX XX XXXX, issues the following

JUDGMENT:

1. The appeal of Z.G. against the decision of the Kosovo Property Claims Commission KPCC/D/A/156/2012 (case files registered as KPA13146), dated 06 June 2012 is accepted.
2. The decision of Kosovo Property Claims Commission KPCC/D/A/156/2012 (case files registered as KPA13146), dated 06 June 2012 is annulled and case file is sent back to the KPCC for reconsideration.

Procedural and factual background:

1. On 26 July 2006 S. J.(henceforth: the Claimant) as a family household member of the property right holder/her late father V. Đ., filed a claim with the Kosovo Property Agency (KPA), seeking ownership and repossession of parcel no 781 in Gornja Repa/Pepë e Epërme, Possession List 31, with the surface 00.61.07 ha, field, of the Cadastral Zone of Repë/Repa, Municipality of Podujevë/Podujevo.
2. To support her claim, the Claimant provided the KPA with the following evidentiary documents:
 - Possession List No.31, issued by Cadastre Office, Municipality of Podujevë/Podujevo. According to the Possession List the property was owned by V. Đ.
 - Marriage Certificate of Claimant, issued by Civil Registration Office, Municipality of Podujevë/Podujevo proving family relationship with her father.
 - The Death Certificate indicating that V. Đ. passed away on 28 October 1994.
3. In the claim it is stated that the property was lost on 30 December 1998 as a result of the circumstances in 1998/1999 in Kosovo and the same is occupied by the neighbor, S. S.
4. On 18 November 2009, the KPA notified the claim by putting a sign at the place where the parcel is located. It turned out to be grassland and it was in possession of S. S. (henceforth: the Respondent)
5. On 19 November 2009, the Respondent, participating in proceedings before the KPA, denied the claimant's allegations.

6. To support his allegation the Respondent submitted the KPA:
- The final Judgement C.nr.361/2008 dated on 01 December 2008 issued by Municipal Court of Podujevë/Podujevo through which the Municipal Court of Podujevë/Podujevo recognized the ownership right over the claimed parcel no.781 with the surface of 0.61.07 ha, located in cadastral zone of Repë/Repa, Municipality of Podujevë/Podujeva to Respondent.
 - Cadastral Decision 09-01/636 issued by Cadastral Office of the Municipality of Podujevë/Podujevo which approved the Respondent's request for registration of the claimed parcel in cadastre. The basis for the update was Judgment C.nr.361/2008 dated on 01 December 2008.
 - Certificate for the Immovable Property Rights no UL-71712070-00188 dated on 15 November 2010 issued by Kosovo Cadastral Agency, Cadastral Office of Municipality of Podujevë/Podujevo altered in accordance with the aforementioned Judgement and shows the claimed parcel in the name of Respondent.
7. On 06 June 2012 the Kosovo Property Claims Commission (KPCC) in Cover Decision KPCC/D/A/156/2012 (case file registered at the KPA under the number KPA13146), dismissed the claim as *res judicata*.
8. On 20 March 2013, the decision was served on Z. G., Claimant's daughter (since the Claimant was deceased) and she has filed the appeal before the Supreme Court on 11 April 2013 (henceforth: the appellant). S. S. received the decision on 28 March 2013 in capacity of appellee and he filed a response to the appeal on 30 December 2013.

Allegations of the parties

Allegations of the Appellant

9. Z. G. challenges the decision due to serious violation of the material and procedural law and erroneous and incomplete determined facts.
10. The appellant alleges that the proceeding before the Municipal Court in Podujevë/Podujevo was initiated in the time when father of late S. J./defendant died as well S. J. was not informed about the court proceedings. The first time she was informed and notified regarding the court proceedings from the KPA. On 13 April 2012 the appellant, submitted the proposal for the retrial to the Municipal Court in Podujevo.

11. The appellant points out that, the trial that has been concluded in absence of defendant who has the status of internally displaced person and who due to well-known conflict circumstances was forced to leave Podujevo in June 1999 cannot be considered as proper and interpreted as *Res Judicata*, she asserted that the decision was issued without having taken into consideration the proposal for retrial which was submitted to the competent court, and still pending before the District Court of Prishtinë/Priština, therefore, there is no legal ground based on which the KPA interpreted the claim as it was decided on the matter refereeing to the Court proceedings before the Municipal Court of Podujevë/Podujevo.
12. The appellant additionally presented new evidence by asserting that they were not submitted before KPCC because they were not requested from the KPA officers :
 - Statement Ov.I.No.64523/2013 dated 10 April 2013 issued by First Basic Court of Belgrade by which the appellant overtook and continued the administrative procedure as the legal successor i.e inheritor of the late S. J. who died on 14 March 2011 in Belgrade
 - Proposal for retrial P. No. 361/2008 dated on 14 March 2012 filed by the appellant to the District Court of Prishtinë/Pristina through the Municipal Court of Podujevë/Podujevo due to the lack of the possibility of the defendant to challenge the allegations of the plaintiff and as a party to be heard correctly and impartially.
 - Rush Note /Urgency P. No. 361/2008 dated 13 March 2013 filed by the appellant before the Appellate Court of Kosovo by asking to be informed regarding the status of the claim and to undertake required factual and legal actions.

The allegations of the Appellee

13. The Appellee filed a response before the Supreme Court alleging that the procedure at the Municipal Court in Podujevë/Podujeva was carried out in compliance with the legal provisions. The latter, declared, his father S. S. has bought the claimed parcel from V.Đ. in 1993. The purchase contract was drafted, the agreed price was paid and S. S. took possession over the claimed parcel ever since, but in 1994 due to conflict between V. Đ. , S. S. and the appellee the latter was arrested and the purchase contract was confiscated by the police and never returned to him. Since, V. Đ. went to Serbia and did not show up to carry out the transfer of the ownership title on the name of the buyer, S. S., had initiated the court

proceeding in the Municipal Court of Podujevë/Podujeva, who acting in conformity with the legal procedures has ended the case which was adjudicated as ***Res Juicata***.

Legal reasoning:

Admissibility of the appeal

14. The appeal is admissible because it has been filed within 30 days as foreseen by Section 12.1 of Law No. 03/L-079.
15. According to Section 3.1 of Law No. 03/L-079 the KPCC has the competence to resolve conflict-related claims concerning ownership or property rights to private immovable property, including agricultural and commercial property. The KPCC is only competent if the claims are directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999.
16. The appellant alleged having lost possession over the claimed parcel on 30 December 1998 as a result of the circumstances in 1998/1999 in Kosovo and the same is occupied by the appellee.
17. In the present case it has been established that the appelle has been registered as property right holder over the claimed parcel pursuant to a final Judgement from 2008, whereby the appelle's allegations were confirmed based on three witnesses, hereunder finding that the father of the appelle purchased the claimed parcel on 1993 and purchase price being paid in full. The court moreover found that the appelle had undisturbed possession of the property ever since he bought it.
18. The appellant as the defendant was represented by a temporary representative appointed by the Court, pursuant to the Article 79.3 (a), (b) of the law on Contested Procedure (No.03/L-006). The Municipal Court of Podujevë/Podujevo decided on the ownership right over the same property and same litigants as in a present claim.
19. The lawsuit was however lodged after the entry into force of the UNMIK/REG/2006/50. The Municipal Court of Podujevo processed this claim even though it was not within its jurisdiction. Article 18 paragraph 1 in conjunction with article 18 paragraph 2 of the Law on Contested Procedure provides that the court, by its official duty, during the entire procedure safeguards whether the settlement of dispute is within the court jurisdiction or not. If the court during the proceedings determines that jurisdiction over settling of the dispute is with a different state body and not with the court, it announced its incompetence, all the procedural actions are declared invalid and the claim is dropped.

20. Section 18 of the Law 03/L-079 excludes the jurisdiction of regular courts towards claims under section 3.1 *ibid* when proceedings in respect of such claim have not commenced prior to the date of its entering into force. Law 03/L-079 (previously UNMIK/REG/2006/50) entered into force on 16 October 2006. After that the Municipal Court of Podujeve/Podujevo had no jurisdiction in property disputes related or originating from the armed conflict of 1998/1999.
21. The Supreme Court reviewed the appealed decision in accordance with the provisions of the Article 194 in conjunction with the Article 182.2 (b) of the Law on Contested Procedure and considers that, pursuant to Section 18 of the Law 03/L-079 and Art 195.1 c of the Law on Contested Procedure, the decision of the KPCC had to be annulled and the case file sent back for reconsideration.
22. When reviewing the case the KPCC would need to verify and assess the documents which were submitted before the Supreme Court pursuant to Article 12 (12.11) of the Law No. 03/L-049 (as noted in paragraph 12 of this decision).

Legal Advice

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

Sylejman Nuredini, Presiding Judge

Rolandus Bruin, EULEX Judge

Krassimir Mazgalov, EULEX Judge

Urs Nufer, EULEX Registrar