

**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-176/13

**Prishtinë/Priština,
22 April 2015**

In the proceedings of
R.K.

Serbia

Claimant/Appellant

vs.

V. F.

Mitrovicë

Respondent/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Esma Erterzi, and Rolandus Bruin, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/180/2012 (case files registered at the KPA under the numbers KPA56736, KPA56739 and KPA92850 dated 14 December 2012 after deliberation held on 22 April 2015, issues the following

JUDGMENT

1. The appeals of filed by R. K., registered under the numbers GSK-KPA-A-176/2013, GSK-KPA-A-177/2013 and GSK-KPA-A-178/2013, are joined in a single case under the number GSK-KPA-A-176/2013.
2. The appeals R. K. against the decision of the Kosovo Property Claims Commission KPCC/D/A/180/2012 dated 14 December 2012, with regard to the claims registered with KPA under Nos. KPA56736, KPA56739 and KPA92850, are rejected as unfounded.
3. The decision of the Kosovo Property Claims Commission KPCC/D/A/180/2012 dated 14 December 2012, with regard to the claims registered with KPA under Nos. KPA56736, KPA56739 and KPA92850, is confirmed.

Procedural and factual background

1. On 3 December 2007, R. K. (henceforth: the Claimant) filed three separate claims with the Kosovo Property Agency (KPA), registered under case no. KPA056736, KPA56739 and KPA92850, seeking confirmation of the co-ownership right over the parcel nos, 403, 404 (KPA56736) in the place Kiseli Ptok/POD K and the parcels no 398, 399, 400, 401 (KPA56739 and KPA92850 separated from the 56739) in the place Kiseli Potok/Jezer, on which a house of 5+2 is located (henceforth: the claimed properties) and repossession.
2. In the claims, it is stated that the claimed properties were lost due to circumstances related to the armed conflict that occurred in Kosovo in 1998/99, indicating 12 June 1999 as the date of loss. Claimant added that all the buildings on parcel 398 were destroyed during 1999.
3. With the claim, he submitted the possession list no 19 issued by Republic of Serbia, the Republic Geodesy Office, Immovable Property Cadastre Vushtri Cadastral Municipality Slatina issued on 18 June 1996 indicating that all the claimed properties are registered under the name of S. (Z.) K.. He also submitted the minutes of a hearing held in Municipal Court in Mitrovicë/a on 25 May 1998, in the inheritance case, C. no 240/96. The minutes reflects a settlement among M. S., M. M., T. O. and R.K.with the respondent K. Z., all the claimants give away their 4/12 parts of the immovable properties registered in the possession list no 19 to claimant S.M.i, on the other hand the claimant R.

- K. gets the 3/12 part of the same immovable property in the possession list no 19 and Z. K. gets 5/12 parts of it.
4. The court settlement for the inheritance is positively verified by the KPA Executive Secretariat. As to the possession list no 19, it was found by the KPA, in Vushtrri department of cadastre, that only parcel 193, 382 and 384 are registered under the same person (S. K.) whereas 398, 399, 400, 401, 403 and 404 are found registered in the name of K.F. under possession list no 127.
 5. On 22 July 2010, the KPA notified the claimed properties by publishing it in the Notification Gazette No.5. The Gazette and the List were left with the village leader who accepted to make them available to the interested parties as well as at the entrance and in the exit of village Sllatine/Slatina. The same publications were also left at the Municipality, Cadastral Office, Municipal Court in Vushtrri, KPA regional office of Mitrovicë/a, as well as to OSCE, UNHCR, Kosovo Privatization Agency and Ombudsperson.
 6. On 5 July 2011, V. (K.) F., filed a notice of participation claiming right over the properties, participated in proceedings before the KPA, by contesting the Claimant's allegations.
 7. In support of his allegation the respondent submitted the Certificate for the Immovable Property Rights UL- 70202061-00127 issued by Kosovo Cadastral Agency, Municipal Cadastral office Vushtrri/Vucitrin on 20 October 2008 showing that parcel no 398 in the place Kiseli Potok/Avlija, parcels no 399, 400,401, in the place Kiseli/Pod Kuqu and parcels no 403, 404 in the place Kiseli Potok/Jezero are registered in the name of the K. F., his father.
 8. On 14 December 2012 2013, the KPCC with its Decision KPCC/D/A/180/2012 dismissed the claims based on Section 18 of the UNMIK Reg 2006/50.
 9. The KPCC decision was served on R. K. (henceforth: the Appellant) on 22 May 2013. On 10 June 2013, he appealed the decision to the KPA Appeals Panel of the Supreme Court. The Appeal was served on the Appellee on 25 October 2013, however, he did not respond.

Allegations of the parties

The appellant

10. Appellant states that the decision of the KPCC involves a fundamental error or serious violation of substantive law and that the decision rests on an erroneous or incomplete determination of the facts.
11. According to the Appellant, in the challenged decision the KPCC refused his claims. He states that he applied to the competent court to ask the annulment of the purchase contract made between his nephew, Z. K., and K. F. and not to confirm his property rights. Therefore, he maintains that both

claims are not same kind of dispute, thus Section 18 of UNMIK Reg 2006/50 does not apply to his claims submitted to the KPA.

Legal reasoning

Admissibility of the appeal

12. The appeals were filed within the time limit of 30 days set in Law No. 03/L-079 Article 12.1 and they are admissible. The KPA Appeals Panel has the jurisdiction to examine the appeals.

Joining of the appeals:

13. According to section 13.4 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, the Supreme Court can decide on joined or merged appeals, when such joining or merger of claims has been decided by the Commission pursuant to Section 11.3 (a) the law. This section allows the Commission to take into consideration the joining or merger of claims in order to review and render decisions when there are common legal and evidentiary issues.
14. The provisions of Law on Civil Procedure that are applicable in the proceeding before the Appeals Panel of the Supreme Court pursuant to Section 12.2 of UNMIK Regulation 2006/50, as amended by Law No. 03/L-079, as well as provision of Article 408.1 as read with Article 193 of the Law No. 03/L006 on Contested Procedure, provide for the possibility of joining of all claims through a ruling if that would ensure court effectiveness and efficiency of the case.
15. In the text of appeals filed by the appellant, the Supreme Court observes that apart from a different case number for which the respective appeal is filed, the facts, the legal grounds and the evidentiary issues are exactly the same in three cases. Only the parcels, subject of the property right which is alleged in each claim, are different. The appeals are based on the same explanatory statement and on the same documentation. Moreover, the KPCC's legal reasoning for the claims is the same one.
16. The appeals registered under GSK-KPA-A-176/13 to GSK-KPA-A-177/13, all three cases, are joined in a single case under GSK-KPA-A-178/13.

Merits of the appeal

17. According to Article 3.1 of the Law No. 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.

18. From the evidences submitted before the KPCC, it can be seen that the claimed properties, which were registered under the name of S. K., were divided into the shares through a court settlement of the inheritance, where 3/12 of the shares were given to the Appellant, 4/12 to his sister S.M. and 5/12 to Z. K., the son of his brother.
19. The respondent submitted a purchase contract made in 2004, after the conflict, between his father K.F. and Z. K., as (allegedly) the authorized person. He also submitted certificate showing the registration of them under his father in the cadastre.
20. The Appellant challenges that his nephew Z. K. had no right to sell the claimed properties with all shares to K. F.. However, this allegation, first of all, involves a dispute which has no relation to the armed conflict. This is because it involves a family dispute on whether an authorization was given to the seller, the nephew of the appellant or, not and further the purchase contract made in 2004, long after the conflict. Accordingly, the loss of possession of the claimed properties does not derive from the armed conflict but from the fact that one of the inheritors made a purchase contract in 2004, regardless of the fact whether he has the right to do so.
21. On the other hand, the appellant already filed a claim with the competent Court for the annulment of such contract (made in 2004) on 1 June 2006, before filing the claims at hand with the KPA. The appellant alleges that he asks from KPA for the return of the possession of the claimed property whereas from the court for the annulment of the sale contract, therefore they are two different disputes. The Supreme Court does not support this argument. Both claims are to the same end. In case that the Municipal Court annuls the contract -in fact, it rejected the claim against which an appeal is filed and is pending- the registration of the ownership title in the cadastre will return to the previous position. Thus, the claimant could enjoy his co-ownership title and the possession or take necessary actions in the relevant institution for repossessing the claimed properties via execution of that judgment. The dispute is pending before the competent court. It was filed before UNMIK Reg 2006/50 came into force. Accordingly, KPCC was correct to consider that matter was excluded from the jurisdiction of the KPCC due to Section 18 of the said Regulation, because the relief sought over there would probably lead to the relief sought from the KPCC, that is to say, co-ownership title over and repossession of the claimed properties.
22. However, the claim is to be dismissed in any case not only because of Section 18 of UNMIK REG 2006/50, as amended by Law 03/L-79, excluding the jurisdiction of the KPCC but also because of the fact that the loss of possession of the claimed properties did not derive from the circumstances

directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999 but as a result of a private purchase contract made in 2004, by one of the co-owners claiming as to be authorized person for all.

23. The Supreme Court finds that the KPCC has made a correct decision, based on a thorough and correct procedure for dismissing the claims.
24. In the light of foregoing, pursuant to Section 13.3 under (c) of the Law 03/L-079, it was decided as in the enacting clause of this judgment. This judgment is without prejudice of the outcome of the pending proceedings before the local courts.

Legal Advice

25. 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.

Sylejman Nuredini, Presiding Judge

Esma Erterzi, EULEX Judge

Rolandus Bruin, EULEX Judge

Urs Nufer, EULEX Registrar