

**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-159/14

**Prishtinë/Priština,
19 May 2015**

In the proceedings of

Ž. B.

Appellant

vs.

F. R.

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/C/224/2013 (case file registered at the KPA under No. KPA50175) of 27 November 2013, after deliberation held on 19 May 2015, issues the following

JUDGMENT

1. The appeal of Ž. B. against the decision of the Kosovo Property Claims Commission KPCC/D/C/224/2013, dated 27 November 2013, with regard to the claim registered with KPA under No. KPA 50175 is rejected as ungrounded.
2. The decision of the Kosovo Property Claims Commission KPCC/D/C/224/2013, dated 27 November 2013 with regard to the claim registered with KPA under No. KPA 50175 is confirmed.

Procedural and factual background:

1. On 16 October 2007, Ž. B. (henceforth: the Claimant) filed a claim with the Kosovo Property Agency seeking for confirmation of his co-ownership right and re-possession of the parcel no 1844/1, on which is located a house and car mechanic shop with the surface 200 m², total surface of the parcel is 00.03.46 ha, located in the Municipality of Ferizaj/Uroševac, street “Trajka Grković no.23 (henceforth to be referred as the claimed property). The claim was registered as case no KPA50175.
2. The Claimant stated that the possession over the claimed property was lost on 17 June 1999 due to the armed conflict in 1998/1999.
3. To support his claim he provided the KPA, *inter alia*, the Possession List and Copy of Plan no. 872 issued by Department for cadaster of Geodetic Authority of the Republic of Serbia on 17 August 2007. According to the Possession List the Claimant is registered as co-owner of 1/7 ideal part of the claimed property.
4. On 19 April 2010, the KPA performed the notification of the property. It turned out to be both damaged house and shop. Both objects were occupied by Z. K. who claimed legal right but did not file a notice of participation to the proceedings. However, another person, F. R. (henceforth: the Respondent) participated before the KPA proceedings with the allegation that he had bought the claimed property from the rightful owner.

5. In support of his allegation the Respondent submitted the Pre-Purchase Contract certified before the Municipal Court of Ferizaj/Uroševac with reference No.4962/08 dated on 2 September 2008. The contract was concluded between Lj. B. and O. Š./B. (Claimant's brother and sister) as sellers and the Respondent together with P. H.as the buyers. Among other properties, the claimed property was also listed as the subject of the pre-purchase contract. Article 2 of it stipulates that parties agreed that the purchase price for the properties will be 280.000 Euro and the buyers shall pay as follows:

“After signing the Pre Purchase Contract the buyers shall pay an amount of 200.000 euro and the remaining amount of 80.000 euro the buyers will pay after all co – owners of the claimed property sign the purchase contract.”

6. The Executive Secretariat of the KPA noted that Lj. B. (Claimant's brother, co-owner of the claimed property and recently the seller of the claimed property) had filed “C” category claim before the Housing and Property Directorate (HPD) regarding the claimed property. The claim was uncontested. The HPCC with its decision HPCC/D/193/2005/C dated 17 June 2005 decided to grant the claim and restored possession of the claimed property to the C category Claimant (the Appellant's brother). Subsequently, in 2007, the Appellant's brother filed a claim before the KPA (claim No.KPA16015) as well asked for the confirmation of the co-ownership right. Later on in 2008, he sold the claimed property to the Respondent.
7. According to the verification reports of 2008, the Pre-purchase Contract No.4962/08 dated on 2 September 2008 was positively verified by KPA. The Certificate for the Immovable Property Rights was found updated based on the Ruling on Inheritance T. Nr. 19/2005 of 2 March 2005 through which the co-owner, Lj. B.(seller of the claimed property) inherited 1/7 ideal part of another co-owner Lj.B. (most probably his mother) and became the co-owner of in total 2/7 ideal part of the claimed property. There are no other changes reflected at the Certificate for the Immovable Property Rights.
8. The Executive Secretariat of the KPA contacted with the Claimant on 25 July 2013. He confirmed the sale of the claimed property, but stated that he was not satisfied with it as he still did not receive the full price owed to him for the sale of his 1/7 ideal part. Moreover, the Claimant stated that he is in contact with the buyers and other co-

owners to divide the total amount of money among them and then to sign the final purchase contract before the Municipal Court of Ferizaj/Uroševac and to transfer the property rights in the name of the buyers.

9. The KPCC dismissed both claims (Claimants claim KPA50175and Claimants bother claim KPA16015) due to lack of jurisdiction since the Claimants confirmed that they or their family members, as the case may be, sold the claimed property to a third party after the conflict based on a valid Purchase Contract. Under these circumstances, the Commission finds that in these claims the Claimants did not lose the possession as a result of the 1998-1999 conflict, but rather as a result of a voluntary sale transaction made after the conflict, consequently the claim fall outside of the Commission jurisdiction.
10. The KPCC decision was served to the Claimant on 31 March 2014 and to the Respondent on 6 February 2014. Ž. B. (henceforth: the Appellant) filed an appeal on 15 April 2014.
11. The appeal was served on the Appellee on 27 August 2014 but he did not respond.

Allegations of the Parties

The Appellant

12. The Appellant challenged the decision of the KPCC alleging that he did not sell the property to anyone. In his appeal, he alleged that the KPCC could not have solved his claim and the claim of his brother Lj. B. in a unique manner with the same decision because the factual and legal grounds were not the same.
13. The Appellant declared that he is co-owner of 1/7 ideal part of the claimed property. Other co-owners are his brothers and sisters. His brother, Lj. B. and his sister O. B. have concluded a pre-purchase contract and have announced a sale of their co-ownership shares, thus, they could have transferred to the buyer only the right they had themselves while his co-ownership share, as well as the shares of the rest of brothers and sisters, have not been the subject of the purchase.

The Appellee

14. The Appellee did not respond the appeal, however, at first instance level, he claimed having bought the claimed property from the co-owners (the claimant's brother and sister) and submitted a pre-purchase contract to this end as mentioned in paragraph 5 above.

Legal Reasoning

15. The appeal is admissible. It was filed within 30 days as foreseen by Section 12.1 of the Law No. 03/L-079. The Supreme Court has jurisdiction over the appeal.
16. The Supreme Court, after the review and assessment of the submissions from the case file, the appealed decision and the allegations of the appellant, considers that the appeal is ungrounded.
17. The Supreme Court has to find out whether KPCC had jurisdiction under these conditions.
18. According to Section 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, a Claimant is entitled to an order from the Commission for repossession of the property if the claimant not only proves ownership of a private immovable property, but also that he or she is not now able to exercise such property rights due to circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.
19. It is not contested among the parties that the Appellant, or his family, initially lost the possession over the claimed property due to the circumstances resulting to the armed conflict.
20. However, from the examination of the full evidences in the file, it is established that the claimed property was subject of the adjudication of the HPCC upon the claim of the Appellant's brother filed over there (for details, see para. 6 above). The HPCC with its decision HPCC/D/193/2005/C dated 17 June 2005 restored possession of the claimed property to the Appellant's brother. The HPCC referred to the claimed property in total without specifying ideal part. This means that the casual link with the conflict related loss of the claimed property was cut on 2005. The brother of the Appellant restored the possession of the said property after the conflict.

21. Moreover, the Appellee claims that he bought the parcel no 1844/1 in 2008. The sale of the property allegedly took place on 2 September 2008 between Lj. B., O. Š./B. and the Appellee meaning quite some time after the conflict. In the Pre-Purchase Contract No.4962/08, it was not specified whether the sellers sold only their ideal part as the co-owners. Article 2 of the contract stipulates that the purchase amount will be paid in two instalments: the first instalment in the amount of 200.000 euro will be paid after signing the Contract and the remaining amount of 80.000 euro will be paid after all co-owners of the claimed property sign the purchase contract, meaning that the object of the sale was the entire property.
22. The Appellant himself confirmed the sale before the Executive Secretariat of KPA (paragraph 8 of the Judgment) but stated he was not satisfied as he had still not received the full purchase price owed to him for the sale of his 1/7 ideal part. This is not within the competence of KPCC.
23. Regardless of whether such pre- purchase contract made by some co-owners (for the whole property) can transfer the ownership right validly to the new buyer (Appellee) or not, the issue at stake here is whether the KPCC has jurisdiction to examine it. As a matter of fact the lack of possession of the Appellant does not derive from the armed conflict anymore more but simply from the pre purchase contract concluded between Appellee and the Appellant's brother who received a declaratory order issued by the HPCC in 2005 and restored the possession and subsequently sold it to the Appellee in 2008. Whether the Appellant is satisfied with the conditions of the sale, the price or the division of the proceeds among the co-owners is irrelevant as to the reason of loss of possession. It is not disputed that the Appellee is in possession of the claimed property due to the pre purchase contract made by some of the co-owners in 2008 and not in a way of occupying it during/just after the conflict as a result of the circumstances related to it.
24. According to the Article 2.1 of the Administrative Decision 2007/5, ...“any person who had the ownership right, lawful possession of or lawful right of use of or to private immovable property, including agricultural and commercial property, **who at the time of filling the claim is not able to exercise his/her property right due to the circumstances directly related to or resulting from the armed conflict....**”. The claim at hand was filed in 2007 with the KPA. However, the family already restored

the possession of the claimed property in 2005 upon that declaratory order issued by the HPCC. The matter therefore, falls outside of the jurisdiction of the KPCC as the loss of possession of the property was not as a result of the armed conflict as of 2007 when the claim was filed by the Claimant with the KPA.

25. The Supreme Court considers that the decision of KPCC was correct as to dismissing the claim outside the limits of jurisdiction and competence of KPCC pursuant to Article 11.4.c of the UNMIK Regulation No 2006/50, as amended by Law No 03/L-079 and is to be upheld.
26. Based on the aforementioned and in pursuant to Section 13.3.b. of the Law No 03/L-079, it is decided as in the enacting clause of this judgment.
27. This judgment is without prejudice to the right of the Appellant to pursue his right about the dissemination of the proceeds of the sale among the co-owners or the possession of the claimed property or any other related matter before the competent local court.

Legal Advice

28. 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.

Sylejman Nuredini, Presiding Judge

Esma Erterzi, EULEX Judge

Rolandus Bruin, Judge

Urs Nufer, EULEX Registrar