

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-286/13

Prishtinë/Priština, 9 June 2015

In the proceedings of:

E. Š.

Montenegro

Appellant

Vs.

P. D.

Prishtinë

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Willem Brouwer and Rolandus Bruin, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/R/199/2013 dated 18 April 2013 (case file registered at the KPA under No. 28515), after deliberation held on 9 June 2015, issues the following:

JUDGMENT

1. The appeal of E.Š., filed against Decision of KPCC/D/R/199/2013 (case file registered at the KPA under No. 28515), dated 18 April 2013, is rejected as unfounded.
2. The decision of the Kosovo Property Claims Commission KPCC/D/R/199/2013 dated 18 April 2013, is confirmed, as far as it regards to KPA28515.

Procedural and factual background:

1. On 26 February 2007, the claimant E. Š. filed a claim at the Kosovo Property Agency (KPA) as a family household member on behalf of his father R. Š. , seeking for the repossession of the parcel no. 4444 and the house built on it with address Dalmatinska str.no.85 in Priština/Prishtinë. He stated that the property was lost due to the armed conflict, indicating 12 June 1999 as the date of loss. The claim was registered at the KPA under KPA28515.
2. The claimant, provided the KPA with the following documents to support his claim:
 - The Possession List no 1270, dated 3 December 2001, issued by the Republic Geodesy Office, Center for Immovable Property, Cadastre Prishtina, of the Municipality of Pristina indicating the name of the possessor as R. Š., the father of the claimant;
 - Copy of plan nr. 953-2/2001-364, dated 17 December 2001, issued by the Department for Cadaster, Geodesy and Property of the Municipality of Pristina, which shows that the claimed property is registered under the name of the claimant's father;
 - Some other documents in German to show that his father lived in Germany.
3. KPA verified the possession list no 1270 negative, in the sense that the property is now found registered in the name of J. B., not in the name of the claimant's father anymore as alleged by the claimant. KPA found out that the changes in the possession list were a result of transactions concluded initially between R. Š. as seller and N. G.i as buyer and subsequently between N. G. and J. B. Furthermore, KPA found a contract no. Vr.nr. 3719/2000 dated 6 December 2000 on sale of the claimed property This contract was concluded between the seller R. Š. and the buyer N. G. KPA verified this contract positive as a valid contract, because it was concluded between the parties and the contract was certified by the Municipal Court in Pristina based on their ID

cards.

KPA could not verify the German documents.

4. Claimant's father left the claimed property in 1999. The house that was built on it before was demolished. Later an apartment building is built on the claimed property and neighbouring parcels.
5. The notification of the claimed property was done by KPA verification team on 21 March 2008. During the notification KPA found out that on the claimed property a new building is constructed that was occupied by unknown persons.
6. On 18 April 2008 P. D. approached KPA as a responding party. He contested the claim and stated that he bought an apartment with surface 97.31 m² build on the claimed property from J. B., and that the property has been under his possession since 2004. He also signed the notice of participation claiming that he is using the property for residential purposes and that he has a legal right over it.
7. To support his allegations he submitted among others the following documents:
 - the contract on sale no Vr. Nr. 3719/2000, dated 6 December 2000, on the sale of the claimed property concluded between the seller R. Š. and the buyer N. G. (positively verified by KPA)
 - the contract on sale no Vr.nr. 5145/2002, dated 13 September 2002 on sale of immovable properties, including the claimed property, between the seller N. G. and the buyer J. B. (positively verified by KPA)
 - the purchase contract no Vr.nr. 3719/2000 on sale of the apartment on the claimed property dated 6 July 2004, concluded between the seller J.B. and buyer P. D. (positively verified by KPA);
8. The copy of ID card of N. G. and the copy of the Ruling no.03-1/333, dated 19 July 2001 issued by the Directory for Economy and Finance in the Municipality of Pristina, which shows that N.G. is charged to pay a fee for transaction of immovable property.
9. The report of Executive Secretariat of KPA reveals that the claimed property is registered under the name of J.B. based on the possession list no 1269 *ex officio* obtained by KPA. J. B. acquired the ownership according to the contract no. Vr.nr. 5145/2002, dated 13 September 2002. The same report also reveals that the contract made between the registered owner J. B. and the Respondent P. D. dated 6 July 2004 is also positively verified. R. Š. passed away on 11 October 2009. Since then the Appellant as his successor is regarded as claimant.

10. With the Decision KPCC/D/R/199/2013, dated 18 April 2013, the Kosovo Property Claims Commission (KPCC) decided to dismiss the claim with the reasoning that the claimant failed to prove that the possession of the property was lost as a result of 1998-1999 armed conflict; therefore it falls outside of jurisdiction of KPCC.
11. The Decision was served on claimant E. Š. (hereinafter: the appellant) on 15 August 2013. On 11 September 2013, he filed an appeal against it. The appeal was served on the Respondent Parim Dejava on 4 March 2013; however, he did not file a response to the appeal.

The allegations of the parties:

The appellant

12. The appellant asserts that the claimed property belonged to his father and now belongs to his successor. As to the notice of participation and the sale contracts submitted by the Respondent, he alleges that his father did not sell the claimed property because when the alleged transaction was done his father was outside of the country as they left Kosovo in 1999. He declares that the contract submitted by the respondent before first instance is a forged one.

The appellee

13. The appellee during the first instance proceedings claimed to be the owner of an apartment on the claimed property as per the contract concluded in 2004 between him and the registered owner J.B. As to the question how the land was transferred to J. B., he refers to the previous contracts made between R.Š. as seller and the buyer N.G. in 2000 and between the seller N.G. and the buyer J. B. in 2002.

Legal reasoning:

Admissibility of the appeal

14. The appeal is admissible. It has been filed within the period of 30 days prescribed in Section 12.1 of UNMIK Regulation 2006/50 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, as amended by Law No. 03/L-079 (Law 03/L-079).

Jurisdiction

15. According to Section 3.1 of the Law 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 his ownership right 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.
16. The KPCC decided that the matter is not in its jurisdiction since the loss of possession does not derive from the circumstances of the armed conflict but derives from the sale contract in 2000.
17. The Supreme Court also concludes that the ownership right and possession over the claimed property is not lost because of the armed conflict of 98-99 in Kosovo. The contract on sale of the property between appellant's father and N.G. in 2000 was positively verified by the Executive Secretariat and found legally valid. This fact clearly shows that the property right and possession of the property was lost due to a sale transaction in 2000 and not due to circumstances related to the armed conflict of 98-99.
18. The appellant claims that the contract made between his father and N. G. is a fake one with the reasoning that his father was not present in Kosovo when the transaction was allegedly done; however, he failed to provide evidences to support these allegations. The documents provided in German intend to show his father was residing in Germany after the conflict. Yet his father residing abroad in general cannot be a mere fact to pretend that the contract is not genuine or valid while the contract is certified by the Municipal Court in Pristina. The Supreme Court notes that the validity of the certification of that contract by the Municipal Court cannot be challenged in these proceedings before KPA and the Supreme Court.
19. Therefore, the Supreme Court concludes that KPCC by dismissing the claim as falling outside its jurisdiction has rendered a correct decision. Consequently, the appeal is to be rejected as unfounded.
20. On the basis of the reasoning above and according to the provision of section 13 paragraph 3.c) of the Law No. 03/L-079, it has been decided as in the enacting clause of this judgment.

Legal Advice

21. 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

Willem BROUWER, EULEX Judge

Rolandus BRUIN, Judge

Urs NUFER, EULEX Registrar