

**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-044/2014

Prishtinë/Priština, 25 November 2015

In the proceedings of:

M. Č.

Montenegro

Appellant

vs.

Sh. D.

Kosovo

Appellee

The Kosovo Property Agency (henceforth: KPA) Appeals Panel of the Supreme Court of Kosovo, composed of Beshir Islami, Presiding Judge, Rolandus Bruin and Anders Cedhagen, Judges, on the appeal against the decision of the Kosovo Property Claims Commission (henceforth: KPCC) no. KPCC/D/A/142/2012 dated 29 February 2012 (case file registered at the KPA under Nos. KPA28522, KPA91209 and KPA91210), henceforth: the KPCC Decision, after deliberation held on 25 November 2015, issues the following

JUDGMENT:

1. The appeals filed by M. Č. registered under the numbers GSK-KPA-A-044/2014, GSK-KPA-A-045/2014 and GSK-KPA-A-046/2014, are joined in a single case under the number GSK-KPA-A-044/2014.
2. The appeal of M.Č. against the decision of the KPCC no. KPCC/D/A/142/2012, dated 29 February 2012 regarding the case files registered at the KPA under the numbers KPA28522, KPA91209 and KPA91210, is accepted as grounded.
3. The decision of the KPCC no. KPCC/D/A/142/2012 regarding the case files registered at the KPA under the numbers KPA28522, KPA91209 and KPA91210 are annulled.
4. The claim of M.Č. is dismissed due to lack of jurisdiction of the KPCC.

Procedural and factual background

1. On 27 February 2007 M. Č., born Vuković, (henceforth: the Appellant), as a family member (daughter) of the deceased registered property right holder L.V., filed a claim at the KPA, seeking confirmation of the ownership right and re-possession of the parcels of land Cadastral Municipality Raushiq/Raušic in the Municipality Pejë/Pec nos. 503, 540/3-5 and 546/1-4, with a surface of 3.95.72 ha (henceforth: the claimed property).
2. The Appellant states that her father was the owner of the claimed property. After his death no inheritance procedure was initiated but she and her brothers divided the claimed property between them in an informal way. She denies that she sold the claimed property to Sh. D. (henceforth: the Appellee). She is not aware if her brothers sold their parts. She would have known if they had sold their parts. Until 1998 she freely used the claimed property but due to the conflict she stopped using it

- and in June 1999 she had to move to Montenegro. Her mother paid taxes for the claimed property until 1995. The Appellee used her brother's parts of the claimed property as lessee and paid rent for that.
3. The Appellant submitted *inter alia* to KPA:
 - The Possession list no. 107, dated 23 September 2005, listing her father L.V. as the owner of the claimed property.
 - A sketch of the claimed property.
 - A witness-statement of D. N. stating that the Appellant and her family regularly farmed the claimed property and lived in Pejë/Pec until her temporarily leave of Kosovo in 1998, and that the claimed property was unlawfully occupied in mid-1998.
 - A statement from the Appellant that her father L. V. died in 1965, however she cannot submit any death certificate.
 4. KPA decided on 25 May 2009 to divide the claim in three separate claims because the parcels are not located next to each other. Claim no. KPA28522 refers since then only to parcel no. 503. Claim no. KPA912209 refers to parcels nos. 540/3, 540/4 and 540/5 and claim no. KPA91210 to parcels nos. 546/1, 546/2, 546/3 and 546/4.
 5. The Appellee claims that he bought parcel 503 from the Appellant and her brothers in 1975 and the other parcels in 1983 and that his family has been in undisturbed possession of the claimed property since then. No written purchase contract and transfer was concluded as there was a problem with the inheritance between the Appellant's brothers and the Appellant, and in 1975 the tax on circulation was high. Later on at the notification of the claims, the Appellee stated that the laws at the time did not allow such an inter-ethnic property transaction to take place. Only a verbal agreement in the presence of witnesses was done. A. D. paid property taxes for the claimed property during the 1990ies.
 6. The Appellee submitted *inter alia* to KPA:
 - Witness statements of I. M., R. Sh. and B. T. stating that Sh. D. bought the parcel 503 in 1975 and the parcels 540/3-5 and 546/1-4 in 1983 from the sons of L.V. for 86 000 respectively 116 000 DM. They also state that neither the Appellant nor her brothers lived in the village after they sold the claimed property.

7. The Executive Secretariat of the KPA verified the possession list as genuine and recommended the KPCC to conduct an oral hearing of the witnesses. Both parties and their witnesses were invited to an oral hearing on 22 November 2011. Only A. D. and two of the witnesses appeared at the hearing. The Appellant indicated that she was sick, unable to travel and concerned about security and participated therefore not in the hearing. The Appellant was instead heard at a telephone conference on 31 January 2012.
8. The KPCC decided in the KPCC Decision, based on the evidence before it and including the evidence offered at the oral hearings, that it is satisfied that the Appellee had purchased the claimed property. The claims therefore stand to be refused. For the reasoning on these claims the KPCC refers in the certified decisions to paragraphs 12 and 79 in the cover decision.
9. The decision was served upon the Appellant on 29 November 2013.
10. The Appellant filed an appeal against the KPCC decision on 20 December 2013. KPA divided the appeal into three cases, each related to one of the three claims meant here for.
11. The Appellee sent in a reply to the appeal.

Allegations of the parties

12. The Appellant alleges that the statement of the Appellee is untrue and given for the purpose of illegal appropriation of her property. She lived in Kosovo until 1999. Until 1998 she and her husband farmed the claimed property and cultivated fruits and vegetables. Her brother also farmed his land until he passed away 1997. If the Appellee would have bought the land they would also have moved in, which they did not. From the Cadastral records it is clear that the only owner of this property is L. V. The Appellee cannot provide any written evidence on his claim.
13. The Appellee alleges that he bought the claimed property from the sons of L.V. and that his family have been working the land since then. The Appellant's brothers left Kosovo immediately after they sold the claimed property. Neither the Appellant nor

her brothers lived in Kosovo and no one usurped the claimed property as a consequence of the war. Therefore the KPA is not competent to decide regarding this case. Instead, it is the regular court which has the competence to verify the ownership.

Legal reasoning:

Admissibility of the appeal

14. The appeal has been filed within 30 days as foreseen by law (Section 12.1 of the 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, henceforth; the UNMIK Regulation 2006/50), therefore it is admissible.

Joining the appeals

15. The provisions of the Law No. 03/L-006 on Contested Procedure (henceforth; the LCP) are applicable in the proceeding before the KPA Appeals Panel of the Supreme Court pursuant to Section 12.2 of UNMIK Regulation 2006/50, in this case. Article 408.1 as read in conjunction with Article 193 of the LCP, provides for the possibility of joining of all appeals through a ruling if that would ensure court effectiveness and efficiency of the case.
16. In the text of the appeal 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 all 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.
17. The appeals registered under GSK-KPA-A-044/14, GSK-KPA-A-045/14 and GSK-KPA-A-046/14 are joined in a single case under GSK-KPA-A-044/14.

Jurisdiction of the KPCC

18. According to Article 3.1 of the UNMIK Regulation 2006/50 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 does not only has 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. Both conditions are to be met.
19. The Appellant alleges that her father was the owner of the claimed property, and that after his death no inheritance procedure was initiated but she and her brothers divided the properties between them in an informal way, and that they used the claimed property until 1998.
20. The Appellee alleges that he bought the claimed property from the Appellant and her brothers in two parts during 1975 and 1983 and that his family has been in undisturbed possession of the claimed property since then. No written purchase contract was concluded as, according to the Appellee, there was a problem with the inheritance between the Appellant's brothers and the Appellant, and in 1975 the tax on circulation was high, and laws at the time did not allow such an inter-ethnic property transaction to take place. Only a verbal agreement in the presence of witnesses was done.
21. The Appellant alleges both that she is not aware if her brothers sold their parts but she would have known if they had sold it, and that the Appellee used her brother's parts of the parcels as a lessee and paid rent for that.
22. The KPCC based its decision on the evidence that was produced before it, namely the witness statements at the oral hearing. The KPCC was therefore satisfied that the Appellee had purchased the claimed property and gained possession in 1975 and 1983.
23. The Supreme Court can leave aside whether this conclusion of the KPCC is well founded, because the burden of prove is on the Appellant regarding the question whether she is not now able to exercise her property rights on the claimed property

due to circumstances directly related to or resulting from the armed conflict in 1998/1999. Against the allegations of the Appellee on the possession the Appellant did not submit convincing evidence that she was in possession of the claimed property until 1998 as she states. Based on this, the Supreme Court finds that the Appellant failed to prove that the loss of the possession of the claimed property derived from a condition related to the armed conflict. Thus, the dispute among the parties exceeds the specific jurisdiction and the competence of the KPCC. This implicates that the KPCC should have concluded that the dispute was not directly related to or resulting from the armed conflict and should have decided that the KPCC has no jurisdiction over the claim.

24. The Supreme Court concludes that the KPCC decided wrongly and unlawfully when the KPCC rendered the appealed decision, since it had no jurisdiction over the claim. Therefore, the KPCC decision is annulled and the claim is to be dismissed pursuant to Section 13.3 (a) of the UNMIK Regulation No. 2006/50.
25. This judgment has no prejudice to any party's to claim right over the property before the competent court in Kosovo.

Legal Advice

26. Pursuant to Section 13.6 of the UNMIK Regulation 2006/50 this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Beshir Islami, Presiding Judge

Anders Cedhagen, EULEX Judge

Rolandus Bruin, EULEX Judge

Urs Nufer, EULEX Registrar