

**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-231/13

Prishtinë/Priština,
2 December 2015

In the proceedings of:

D. V.

Serbia

Appellant

vs.

H. S.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Rolandus Bruin and Anders Cedhagen, Judges, on the appeal against the decision of the Kosovo Property Claims Commission (KPCC) no. KPCC/D/R/191/2013 dated 13 February 2013 (case file registered at the KPA under no. KPA18176), after deliberation held on 2 December 2015, issues the following

JUDGMENT:

1. The appeal of D. V. against the decision of the Kosovo Property Claims Commission no. KPCC/D/R/191/2013 dated 13 February 2013 is rejected as unfounded.
2. The decision of the Kosovo Property Claims Commission no. KPCC/D/R/191/2013, dated 13 February 2013, is confirmed as far as it concerns claim no. KPA18176.

Procedural and factual background:

1. On 11 November 2006 D. V. (henceforth: the Appellant) filed a claim with the Kosovo Property Agency (KPA), seeking confirmation of his property right over a house with yard with the surface of 4 ar 41 m² located in the municipality of Skenderaj/Srbica, in Street 7. juli 5, cadastral zone Skenderaj/Srbica, parcel number 87/3, registered in possession list number 65 (henceforth: the claimed property).
2. The Appellant stated that his father, R. V, is the owner of the claimed property that his father died in 1991, but that a transfer of ownership of the claimed property was not registered in the cadastral books. The Appellant further stated that the legal basis for his claim is the fact that he is family member – child – of the property right holder and that he lost the property right as a result of the circumstances in 1998/1999 and that the claimed property is usurped by unknown persons.
3. To support his claim the Appellant filed – as far as relevant - the following documents:
 - a) a copy of his birth certificate, issued on 24 July 1981 in Gornja Klina; according to this certificate R.V. is the father of the Appellant;
 - b) a copy of the death certificate of his father R. V. issued on 14 January 1991 in Skenderaj/Srbica.
 - c) A possession list, no. 65, dated 13 November 1985; in this list R. V. is registered as owner of the claimed property.

4. The KPA verified the death certificate prima facie positive. Verifying the birth certificate deemed the KPA not necessary. Upon verification of the possession list on 21 September 2011, the KPA found that R. V. is no longer registered as owner of the claimed parcel but H. S. (henceforth: the Appellee). The KPA added *ex officio* to the case file the Certificate for the Immovable Property Rights number UL-72015063-00065, dated 21 September 2011, issued by the Municipal Cadastral Office of Skenderaj/Srbica Department of Cadastre. According to this certificate the claimed property is registered under the name of H. S. as owner of the claimed property.
5. On 28 April 2009 the KPA went to the claimed property, notified the claim and found it occupied by the Appellee. The Appellee signed that day a declaration. He declares that he claims a property right over de claimed property and that he participates in the proceedings before the KPA/KPCC.
6. Appellee submitted to the KPA the following documents:
 - a) A possession list no. 65, Cadastral zone Skenderaj/Srbica dated 28 February 2002. According to this list D. V. (daughter of R.V.) was at that moment 1/1 property right holder of the claimed property;
 - b) A written authorization (Power of attorney), dated 21 February 2002 and certified by the Municipal Court of Skenderaj/Srbica, VR.nr. 273/2002, on 25 February 2002. According to this authorization D. V. authorized lawyer Sh. I. from Skenderaj/Srbica to sell the claimed property. She also states that she inherited the claimed property from her father R. V.;
 - c) A certified real estate transaction contract (Purchase contract), dated 30 January 2002 and certified by the Municipal Court of Skenderaj/Srbica, VR.nr. 152/2002, on 4 March 2002. According to this contract D. V. sold the claimed property to the Appellee.
7. The KPA deemed verification of the Purchase contract and the Power of attorney not necessary.
8. The KPA contacted the Appellant on 20 December 2012 and asked him until when he used the claimed property and whether he sold the claimed property to the Appellee. The Appellant confirmed that he has been living in Serbia since 1980 and that the claimed property was used by his family (mother, brother and three sisters). They left Kosovo during June 1999. He confirmed that his sister sold the claimed property to the

Appellee in 2002 to a person in Skenderaj/Srbica, but that he did not agree, because he never received his share of the purchase price. He further answered that an inheritance procedure was never initiated and that the claimed property is still in the name of his father. The KPA informed the Appellee during this contact that the claimed property is now registered in the name of the Appellee. This contact is recorded in the case file (page 165).

9. On 13 February 2013 the KPCC with its Decision no. KPCC/D/R/191/2013 dismissed the claim. The reasoning (paragraphs 9, 27 and 28) refers not only to the claim of the Appellant but also to some other claims. The KPCC does not specify whether the Appellant is acting in his capacity of property right holder in person or as family household member. The KPCC states that the Appellant failed to show that his claim involves circumstances directly related to or resulting from the armed 1998-1999 conflict. The KPCC further states that in some of the claims the alleged property right holder and their family never had possession over the claimed property. The KPCC concludes that the claim falls outside its mandate.
10. The decision was received by the Appellee on 14 June 2013. The decision was served to the Appellant on 4 July 2013.
11. The Appellant filed an appeal against the KPCC decision on 25 July 2013.
12. The appeal was served on the Appellee on 5 November 2013. The respondent did not reply to the appeal.

Allegations of the Appellant

13. The Appellant states in the appeal that he did not receive an adequate reply to his claim. He states that he lost ownership of the claimed property due to the conflict in 1998-1999. He denies that another person, the Appellee, is the owner since the year 2010. The Appellant asks clarification from whom this man allegedly bought the property. According to the Appellant the property is registered in the name of R. V. who died on 10 January 1991.

Legal reasoning:

Admissibility of the appeal

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

Merits of the appeal

15. The KPCC dismissed the claim on the bases that it did not have jurisdiction to decide on the merits of the claim since the Appellant failed to show that his claim involves circumstances directly related to or resulting from the 1998-1999 conflict.
16. In appeal the Supreme Court has to answer the question whether the KPCC rightfully took this decision and whether the reasoning for it stands.
17. According to Section 3.1 of Law UNMIK 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 is not only to provide an ownership title over a private immovable property but also to show that he or she is now not 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.
18. From this provision follows that the Appellant has to substantiate and, if there is any doubt on his allegations, to provide evidence that he is the property right holder of the claimed property and that he cannot exercise that property right due to that conflict.
19. The Supreme Court examines whether the allegations of the Appellant in this regard are convincing in the light of the facts found by the KPA/KPCC and whether he submitted sufficient evidences and reasons as follows.
20. In this case it is not in dispute that the father of the Appellant, when he was alive, was the owner of the claimed property. The father died in 1991.
21. The KPA gathered some information that indicates that the Appellant was not the property right holder during the conflict:

- the possession list, dated 28 February 2002, (see paragraph 6.a) lists only the Appellant's sister as property right holder;
- in the Power of attorney also only that sister is designated as the sole owner (see paragraph 6.b);
- the Purchase contract is agreed between the sister as sole owner and the Appellee (see paragraph 6.c);
- furthermore the Appellee is registered in the Certificate for the Immovable Property Rights, dated 21 September 2011, (see paragraph 4) as owner.

Although the Power of attorney and the Purchase contract are not verified, the *ex officio* obtained Certificate for the Immovable Property Rights indicates that the ownership is lawfully transferred to the Appellee. Furthermore, in the contact with the KPA (see paragraph 8) the Appellant confirmed that he has not been living on the claimed property since 1980.

22. On the other hand, the Appellant did not provide any evidence that he as an heir to his father before the armed conflict gained any (partial) property right to the claimed property. He did not provide an inheritance decision or any other proof about his (co) ownership to the claimed parcel. The evidence submitted by him (i.e the Death Certificate of his father) does not show that the claimant is the owner or that he was in possession of the property from before the conflict.
23. There for the Supreme Court concludes that the Appellant did not substantiate that he was the property right holder of the claimed property prior and during to the armed conflict. He neither substantiated that he cannot exercise such property right due to the conflict. The requirements set out by Section 3.1 of law UMMIK 2006/50 are thus not met and the KPCC concluded rightfully that it did not have jurisdiction to decide on the claim.
24. In the light of the foregoing, pursuant to Section 13.3 under (c) of Law UNMIK 2006/50 the Supreme Court decides as in the enacting clause of this judgment.

Legal Advice

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

Sylejman Nuredini, Presiding Judge

Rolandus Bruin, EULEX Judge

Anders Cedhagen, Judge

Urs Nufer, EULEX Registrar