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-079/14

Prishtinë/Priština, 16 December 2015

In the proceedings of:

Z,K.
Stevana Mokranjca 37
Velika Plana
Serbia

Appellant

vs.

A.G.
Rufc i vjetër/Staro Rujce
Lipjan/Lipljan

Appellee

The 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 (KPCC) no. KPCC/D/A/156/2012 (case file registered at the KPA under the number KPA29959), dated 6 June 2012, after deliberation held on 16 December 2015, issues the following

JUDGMENT

1. **The appeal of Z,K. is accepted as grounded.**

2. **The decision of the Kosovo Property Claims Commission no. KPCC/D/A/156/2012, dated 6 June 2012, as far as it concerns claim no. KPA29959 is modified as follows:**

   a. **Z,K. has established that the heir(s) of his deceased grandmother S.K. is/are owner(s) of the parcel with a surface of 00.05.37 ha, located at the place called Selo Slogovi, parcel no. 225, cadastral zone Staro Rujice/Rufc i vjetër, in the Municipality of Lipjan/Lipljan;**

   b. **Z,K. is entitled to repossession of the parcel mentioned under a.;**

   c. **Any other person occupying the parcel mentioned under a. has to vacate the parcel within 30 (thirty) days of delivery of this Judgment;**

   d. **Should any other person occupying the parcel mentioned under a. fail to comply with this Judgment to vacate the parcel within the time period stated, he or she shall be evicted from the parcel.**

Procedural and factual background

1. On 1 June 2007, Z,K. , as claimant, (henceforth: the Appellant) and as a family member of his grandmother, S.K. , filed a claim with the Kosovo Property Agency (KPA), seeking his grandmother to be recognized as the property right holder and claiming repossession over the parcel, a 1st class pasture with a surface of 00.05.37 ha, located at a place called Selo Slogovi, cadastral zone Staro Rujice/Rufc i vjetër, parcel no. 225, in the Municipality of Lipjan/Lipljan (henceforth: the claimed property).
2. The Appellant alleged that the claimed property was lost on 20 June 1999 as a result of the circumstances in 1998/1999 in Kosovo.
3. To support his claim, the Appellant provided the KPA with the following documents:

a. The Possession List no. 47 of the Cadastral Office Municipality of Lipjan/Lipljan, cadastral zone Staro Rujice/Rufc i vjetër, dated 1 April 2002, showing the claimed property registered under the name of S.K. ;

b. The Marriage Certificate, issued by the Municipality Velika Plana, Serbia, on 10 March 1989; the Certificate shows that in the marriage registration book for the year 1989 under no. 14 is registered the marriage between the Appellant and Z.R. , and that the father of the Appellant is I.K. ;

c. The Death Certificate issued by the Civil Registration Office, Municipality of Velika Plana, on 27 September 2002, showing that in the register of deaths for the Municipality of Velika Plana under number 51 of the year 2002 is registered that I.K. , whose mother was S.K. , died on 19 March 2002 in Velika Plana, Serbia. The place of birth of the deceased was Rujice/Rufc, Lipjan/Lipljan.

d. The Death Certificate, issued by the Civil Registration Office, Municipality of Lipjan/Lipljan on 4 January 2008, showing that the Appellant's grandmother, S.K. , whose father was A.A. , passed away on 6 November 1979 in Staro Rujice/Rufc i vjetër.

4. The KPA verified the Death Certificates positive.

5. On 22 October 2007, KPA officers went for the first time to the place where the parcel was allegedly situated and found a parcel occupied by A.G. (henceforth: the Appellee). He claimed that he bought it from the owner and possesses all the documents needed. After receiving the notification of the claim on 26 October 2007 the Appellee signed the application for taking part in the proceeding.

6. In support of his allegations the Appellee provided the KPA with the following:

a. An Uncertified Purchase Contract concluded on 8 May 1995 between S.K. represented by her son, J.K., (on the bases of the Power of Attorney Ov. Br. 217/1995) in a capacity of the seller and the Appellee as the buyer. The subject of the transaction are the parcels with nos. 229 and 230 in Avilja Village (0.29.29 ha), no. 214/1 in Village near Sitnica (0.05.23 ha) and no. 394 in Slogovi village, but not the claimed property;

b. The receipts of 8 May and 11 November 1995 wherewith the seller S.K. has confirmed receiving 30 0000 DM (German Currency) as the transaction amount from the buyer, the Appellee.

c. The Possession List no 46 issued by the Directory for Cadaster, Geodesy and Property of the Municipality of Lipjan/Lipljan, on 9 January 2002; this possession list relates to

parcels nos. 214/1, 229, 230, 287, 375 and 394 in Staro Rujice/Rufc i vjetër, but not to the claimed property.

d. A Letter of the Appellee dated 26 October 2007. In this letter he explains that he concluded on 8 May 1995 with J.K. a contract for purchasing a parcel (yard) and a pasture. He states that he purchased 00.29.29 ha of yard and 00.14.77 ha of pasture. However, in the letter the Appellee points out that near the pasture of J.K. there was also 00.05.23 ha of the cousin I.K. . Based on the agreement that J.K and I.K. made, they exchanged 00.05.23 ha with a garden, so the Appellee has paid also for 00.05.23 ha (regarding the parcel subject to the exchange). That parcel was near the pasture with the surface of 00.14.77 ha.

7. The Appellant in a written response to the KPA dated 22 April 2009 has contested the ownership right of the Appellee over the claimed property by asserting that the Purchase Contract of 1995 concluded between his grandmother and the Appellee does not contain parcel no. 225 either as a subject to purchase or subject to exchange.

8. Both the Appellant and the Appellee were informed by the KPA about a wrong notification on 22 October 2007 (p. 066 of the KPA file). The notification of the claim was repeated on 23 November 2009 by putting a poster about the claim on the parcel. The coordinates of the notified property, mentioned in the Notification reports, are different from the coordinates of the parcel that was object of the notification on 22 October 2007. Once again the property was found occupied, but the person who was using the property, could not be found. The next day, the notification was checked based on orthophoto and GPS coordinates and was found to have been accurate. No one filed a notice of participation in reaction of the second notification.

9. In the meanwhile, the KPA has been able to verify the Possession List, submitted by the Appellant. On verification the KPA found the Certificate for Immovable Property Rights issued by the Municipal Cadastral Office of Lipjan/Lipljan on 28 December 2007 (UL-71409081-0047) and added that Certificate *ex officio* to the file. This Certificate indicates that the claimed property is (still) registered in the name of S.K. .

10. The KPA also added to the case file a Correspondence Activities Query, dated 15 May 2012. According to this memo the Appellant during the phone conversation on that day '*confirmed that he does not contest that claimed parcel no. 225 with 00.05.37ha was subject of the land swap between his father and his cousin, and the same now is sold to RP by his cousin J.K.*.

11. The KPCC refused the claim by concluding that the Appellant has failed to show ownership or any other property rights over the claimed property prior or during the 1998-1999 conflict. In its reasoning (paragraphs 11, 164-166 of the Cover decision) the KPCC refers to the allegations of the Appellee on the uncertified purchase contract and confirmation of the Appellant in the phone conversation on 15 May 2012 that the claimed property was sold to the Appellee, and that the sale was never formalized.
12. The decision was served on the Appellant on 7 November 2013 while the same was served to the Appellee on 27 March 2013.
13. On 29 November 2013 the Appellant filed an appeal with the Supreme Court.
14. The appeal was served on the Appellee on 29 April 2014. He did not reply to the appeal.

Allegations of the Appellant

15. The Appellant states that the KPCC decision is based on an incomplete determination of the factual situation and misapplication of substantive law.

16. The Appellant alleges that the statement on which the KPCC relied on when it decided on his claim is not correct. He declares that there was a misunderstanding because the property in question was never subject to exchange. His father actually did exchange a part of one parcel for another one, but not a part of parcel no. 225. It was a part of parcel no. 395 with the surface 00.05.23 ha (total surface of parcel 395 is 00.14.24 ha, so the 00.05.23 ha from this parcel was subject of exchange). The Appellee had to use that part as a road towards his parcel no. 394 (cultivated land with surface 00.14.77 ha) that he bought from J.K. .

17. The Appellant highlights that the claimed property is located on the other side of the road and does not border with the parcel bought by the Appellee. Moreover, he insists that the fact that part of parcel no. 395 with the surface 00.05.23 ha was exchanged, not parcel no. 225 with the surface 00.05.27 ha, can be confirmed by witnesses who were present when the agreement was concluded as well as with an investigation on the scene with the presence of the parties. Therefore, the Appellant requests the Supreme Court to approve his appeal and recognize him as the owner of parcel no. 225.
18. The Appellant supports his allegation with a sketch drawn by him, reflecting the locations of the mentioned parcels, among of them the claimed one.

Legal reasoning:

19. The Appellant has filed his appeal within the deadline prescribed by 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 (henceforth: UNMIK Regulation 2006/50). Therefore the appeal is admissible.
20. The Supreme Court further concludes, based on the Death Certificates, that the Appellant as an heir to S.K. was entitled to file the claim in this case on his own behalf and to file the appeal.
21. The question to be answered in this case is whether the KPCC decision rests upon an erroneous or incomplete determination of the facts.
22. The KPCC concluded that (the heirs of) S.K. is no longer owner or property right holder to the claimed property because of the exchange of the property to the Appellee in 1995. This determination of facts cannot stand.
23. As the Appellant pointed out, the Appellee was referring to another parcel than the claimed property when he stated that the parcel was subject of an exchange. This follows from these facts: the KPA in first instance notified the claim on a parcel that was in use by the Appellee, but that turned out to be another parcel than the claimed property; secondly, as the Appellant states, the Appellee refers in his response to the claim to a parcel of land with another size and other type of field (0.05.23 ha; arable land) than the claimed property (00.05.37 ha; 1st class pasture); furthermore the claimed property is not mentioned in any of the documents the Appellee submitted to the KPA. The Appellee did also not join proceedings in appeal to contest the allegations of the Appellant.
24. The memo from the KPA on the contact with the Appellant is in sight of these facts not convincing and therefore does not lead to another conclusion.
25. As the KPCC determined the relevant facts are erroneous, the appeal is founded and the decision on the claim has to be modified.
26. From the Certificate for Immovable Property Rights, meant here fore in paragraph 9, follows that S.K. is still registered as owner of the claimed property. Therefore the claim

stands to be granted in the sense that the heir(s) to her are to be recognized as owner(s) of the claimed property and the Appellant as one of them to be (re)stored as possessor. Other than the Appellant claims in appeal, he did not substantiate that he is to be recognizes as the (sole) owner of the claimed property.

27. On the basis of the above and in accordance with Section 13.3 (a) of UNMIK Regulation 2006/50 the Supreme Court decides as in the enacting clause.

Legal Advice:

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

Beshir Islami, Presiding Judge

Rolandus Bruin, EULEX Judge

Anders Cedhagen, EULEX Judge

Urs Nufer, EULEX Registrar