

**SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA**

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË AGJENICISË KOSOVARE TË PRONËS-AKP-së
ŽALBENO VEÇE KOSOVSKE AGENCIJA ZA IMOVINU-KAI**

GSK-KPA-A-165/15

Prishtinë/Priština

21 February 2018

In the proceedings of:

A.A.V.

Represented by:

Z. V.

Appellant

vs.

Sh. D.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Beshir Islami, Presiding Judge, Krassimir Mazgalov and Ragip Namani, Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/A/255/2014 dated 27 August 2014, the case file registered at the KPA under number KPA44403, after the deliberation held on 21 February 2018, issues the following

JUDGMENT

1. The Appeal of Z. V., filed against the Decision KPCC/D/A/255/2014 (the case file registered at the KPA under the number KPA44403), dated 27 August 2014, is rejected as unfounded.
2. The Decision of the Kosovo Property Claims Commission KPCC/D/A/255/2014 dated 27 August 2014; as far as it regards the Claim registered under the number KPA44403 is confirmed.

Procedural and factual background

1. On 29 July 2007, Z. V. (hereinafter: “the Appellant”) filed a Claim (on behalf of her late husband A. A. V.) at the Kosovo Property Agency (hereinafter “the KPA”) seeking confirmation of the ownership right and repossession for 1/3 equal part of the cadastral parcel No 1736/1, cultivated land of the 3rd class, with the surface of 00.02.58 ha (at which parcel is situated the house with the surface 65m²), located at the place called “Bore Vukomirica” at Municipality of Pejë/Peć (hereinafter “the claimed property”). The Appellant stated that her late husband inherited the claimed property from his uncle-P. P.
2. According to the Appellant, the possession over the claimed property initially was lost due to the armed conflict, indicating 12 June 1999 as the date of loss, but later on she declared that J. Ç. and H. Q. have had sold the claimed property on 2002 through the forged Power of Attorney.
3. Together with the Claim, the Appellant provided the KPA with the following documents:
 - The copy of Power of Attorney through which J. P. (the wife of P.P.) authorized Hajdar Qufaj to represent her before Municipal Court of Pejë/Peć on the inheritance procedure after (her husband) P. P. death. According to the Power of Attorney, Hajdar Qufaj was in same time authorized to conduct the Contract on Sale which

relates the claimed property. The Power of Attorney was verified at Montenegro on 7 November 2002 under the number 13094/02,

- The copy of the Ruling on Inheritance T.nr.246/02 issued by Interim Administration of Kosovo-Municipal Court of Pejë/Peć on 11 November 2002 based on which J. P. inherited the claimed property from her husband, P. P. The Ruling became final on the date of issuance,
- The Copy of the Contract on Sale concluded between J. P. (represented by the lawyer J. Ç.) in the capacity of the seller and Hajdar Qufaj in the capacity of the buyer of the claimed property. The Contract on Sale was verified before Municipal Court of Pejë/Peć on 20 November 2002 under the verification number 9857/02,
- The copy of the Criminal Charge filed by A. A.V. before the Municipal Prosecution Office in Pejë/Peja on 2006 against H. Q. and J. Ç. due to the grounded suspicion of the criminal offence of fraud,
- Copy of Ruling on Inheritance number 2981/06 issued by 2th Municipal Court of Beograd based on what A.A.V. inherited 1/3 equal part of the cadastral parcel no 1736/1 listed on Possession List No 137, from his uncle-P. P.. The Ruling become final on 2 March 2007,
- The copy of Additional Ruling on Inheritance number 2981/06 issued by 2th Municipal Court of Beograd whereby A. –A. V. was pronounced as the heir of 1/3 equal part of the cadastral parcel no 1735 which inherited from his uncle P. P. The Ruling became final since 18 June 2007
- The copy of the Power of Attorney, whereby A. –A. V. authorized his wife Z. V. to represent him before Municipal Court of Pejë/Peć in a capacity of the Claimant, on the Criminal Case (against H. C. and J. Q.) relating to the forged Contract on Sale. The Power of Attorney was legalized on 27 March 2007 before 4th Municipal Court of Beograd under the verification number 4416/07,
- The copy of the Death Certificate No 203-15/07-02 issued by Civil Registration Office of Kuršumlja on 2 March 2007 showing that J. P. passed away on 22 September 2005.

- The copy of Death Certificate No 00534670 issued by Civil Registration Office of Municipality of Beograd on 1 December 2011, showing that P. P. passed away on 17 December 1976,
4. The notification of the Claim with regard to the cadastral parcel No 1736/1 was performed on 18 June 2009. The property was found to be not occupied destroyed house. The Correctness of the Notification was checked on 7 July 2009.
 5. Sh. D. (hereinafter: the Appellee) approached the Executive Secretariat of KPA on 02 July 2009 by claiming that he has bought the cadastral parcel no 1736/1 from P. P. on 1982.
 6. He presented the following documents supporting his allegations:
 - The Ruling on Inheritance Nr.57/90 issued by Municipal Court of Pejë/Peja on 21 January 1990 whereby J, M, V, S. P, K.D. and M. Po. inherited the claimed property from the deceased P.P.
 - The copy of the Written Statement certified before Municipal Court of Pejë/Peć on 25 November 2002 under the number 9927/02, whereby Sh. D. declared that he has bought the cadastral parcel no 1735 and 1736/1 listed on Possession List no 137 from P. P. on 1982,
 - The copy of the Lawsuit for confirmation of the property right based on the Contract on Sale, filed before Municipal Court of Pejë/Peć on 22 October 2002 by Sh. D. in the capacity of the plaintiff,
 - Minutes from the Main Hearing relating to the contested case C. Nr. 609/02, held before Municipal Court of Pejë/Peć on 12 March 2004, whereby the procedure was terminated due to the absence of the Respondent or his heirs.The termination will continue until the conditions have been created for the Respondent, namely his heirs, to be served with the invitation in a regular manner.
 7. The Verification Department of the Executive Secretariat of KPA verified positively below documents:
 - Power of Attorney No 13094/02 dated on 7 November 2002,
 - Ruling on Inheritance T.nr.246/02 on 11 November 2002,
 - Contract on Sale No 9857 dated on 20 November 2002,
 - Ruling on Inheritance number 2981/06 dated on 2 March 2007,
 - Written Statement certified on 25 November 2002 under the No 9927/02 and

- Minutes from the Main Hearing relating to the contested case C. Nr. 609/02, held before Municipal Court of Pejë/Peć on 12 March 2004.

From the findings of the Executive Secretariat of the KPA (Verification Report dated 1 December 2011) it may be concluded that the claimed property was divided into new cadastral parcels as follows:

- Cadastral parcel no 1736/1 initially was registered on the name of Hajdar Qufaj based on the Contract on Sale 9857/2002 dated on 20 November 2002 and afterwards it was registered in the name of Jeton Vishaj. The changes were done based on the Contract on Sale No 1693/11 dated on 8 March 2011.
 - The cadastral parcel no 1736/3 was registered on the name of Hajdar Qufaj based on the Contract on Sale No 9857/02 dated on 20 November 2011 and then it was transferred on the name of Haser Hysaj through the Contract on Sale No 190/2012 dated on 13 January 2012.
8. With its Decision KPCC/D/R/255/2014 dated 27 August 2014, the Kosovo Property Claims Commission (hereinafter “the KPCC”) dismissed the Claim. In its reasoning, the KPCC stated that the claim is contested in the sense that the Respondent has expressed a legal interest in the claimed property and has submitted the evidence showing that he initiated a Lawsuit against the alleged property right holder prior to 16 October 2006 with the competent Court. Pursuant to section 18 of UNMIK/REG/2006/50 as adopted by Law 06/L-079, the Commission’s jurisdiction is excluded if judicial proceedings in respect of the claim have been commenced prior to 16 October 2006; the date on which UNMIK/REG/2006/50 entered into force, hence, the claim stands to be dismissed.
9. The KPCC Decision was served to the Appellant on 29 October 2014. She filed the Appeal on 20 November 2014.

The allegations of the parties

The Appellant

10. The Appellant declared that the KPCC’s Decision rests on erroneous application of the material law and incomplete determination of the factual situation.

11. The Appellant asserts that the KPCC's Decision as such prevents him of using the claimed property because basically it not decided on the claim and the factual condition on the field remains the same. According to the Appellant if the KPA claims in which there are two or more parties in the dispute who claims that they have property right over the same property refers to the other institutions-bodies, it means that it will only solve claims were there is no any dispute while KPA is established because the Kosovo Courts were not able to finish the given tasks allocated to these agencies.
12. Finally, the Appellant motions the KPA Appeals Panel of the Supreme Court of Kosovo to grant his claim and confirm the property right on his favour.

Legal reasoning

Admissibility of the appeal

13. The appeal was filed within 30 days as foreseen by Article 12.1 of the Law No 03/L-079 and is admissible.

Merits of the Appeal

14. The Supreme Court reviewed the appealed Decision pursuant to provisions of Article 194 of Law on Contested Procedure No 03/L-006 (henceforth: LCP) and after evaluating the allegations of the Appellant it found that the appeal is unfounded.
15. The Supreme Court finds that the KPCC has rendered a correct Decision when dismissed the claim due to its Jurisdiction; however, the Court reasons slight differently the KPCC's conclusion.
16. Pursuant to Section 3.1 of the 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 or use rights of the private immovable property, but also 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 that occurred in Kosovo between 27 February 1998 and 20 June 1999.**

17. In this regard, first of all, from the submitted evidences as well as from the statements of the Appellant, the Supreme Court considers that the matter of the possession of the claimed property prior to the conflict was not clarified. This is because the Appellant alleged to have gained the co-ownership right based on the Ruling on Inheritance. The Ruling on Inheritance at which the Appellant refers it was issued on 2007 and this led to the conclusion that the Appellant's husband did have neither ownership nor possession of the claimed property during the period from 27 February 1998 and 20 June 1999.
18. Secondly, based on the updated cadastral records, the claimed property is registered on the name of third parties. From the submitted evidences as well as from the statement of the Appellant can be concluded that the J. P.-the wife of the Appellant's uncle (from whom the Appellant alleged to have inherited the claimed property) has been entered at the sale transaction of the claimed property on 2002.
19. The first sale of the property allegedly took place on 20 November 2002, meaning quite some time after the conflict and then followed by other sales (the KPA documents in the file refer to year 2012).
20. The Appellant alleges that the sale of the claimed properties occurred in illegal manner based on the forged Power of Attorney and for that reason he has initiated criminal charge.
21. Nevertheless, the circumstance whether the Contracts are legally valid is not relevant for the current proceedings. The allegation on forgery cannot be examined by the KPCC or the Supreme Court herein. The alleged Contract, regardless of whether that is forged or not, bearing the years 2002 indicate that the dispute at hand between parties is not directly related to nor results from the armed conflict that occurred in Kosovo in 1998/99. The contested matter between the parties whether the contracts were forged or signed under pressure does not fall within the scope of jurisdiction of the KPCC, since it has no direct link with the armed conflict.
22. The challenged Decision of the KPCC was issued in full and fair determination of the factual situation and on such ground both the material and procedural law was properly applied.
23. Therefore, the Supreme Court concludes that the KPCC by dismissing the Claim as falling outside its jurisdiction has rendered a correct Decision but based on all above mentioned points, the Supreme Court finds that the KPCC instead of dismissing the Appellant's claim as outside the scope of its Jurisdiction because of the court procedure occurred prior to 16 October 2006 with the competent Court, should have dismissed the claim due to lack of its

Jurisdiction as the dispute at hand between parties is not directly related to nor results from the armed conflict that occurred in Kosovo in 1998/99.

24. In the light of foregoing, pursuant to Section 13.3 under (c) of the Law 03/L-079, it was decided as in the enacting clause of this Judgment.

25. This Judgment is without prejudice of the right of the Appellant to pursue its alleged right before the competent court, if he considers it necessary.

Legal Advice

26. Pursuant to Section 13.6 of the Law 03/L-079, this Judgment is final and cannot be challenged through ordinary or extraordinary remedies.

Beshir Islami, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Ragip Namani, Judge

Bjorn Olof Brautigam, EULEX Registrar