

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-139/14

Pristina, 18 May 2016

In the proceedings of:

S.D.

Village Jasenovik

Novobërdë/Novobrdó

Kosovo

Appellant

Vs.

Z.S.

Svetogorska 1147

34000 Aerodrom

Republic of Serbia

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Beshir Islami and Krassimir Mazgalov, Judges, deciding on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/R/221/2013 dated 27 November 2013 (case file registered at the KPA under KPA36438), after deliberation held on 18 May 2016, issues the following:

JUDGMENT

1. The appeal of S.D. , filed against Decision of the Kosovo Property Claims Commission KPCC/D/R/221/2013 (case file registered at the KPA under No.21215), dated 27 November 2013, is rejected as unfounded.
2. The decision of the Kosovo Property Claims Commission KPCC/D/R/221/2013 dated 27 November 2013 is confirmed, as far as it regards to the claim registered at KPA under the number KPA36438.

Procedural and factual background:

1. On 5 July 2007 Z.S. (hereinafter: the Appellee), in her capacity as an alleged property right holder filed a claim at the Kosovo Property Agency (hereinafter: KPA) seeking for the repossession of a residential house and its surroundings with surface of 193 m2 (hereinafter: the claimed property) built on the cadastral parcel no.1202, located in Village Jasenovik, in the Municipality of Novobërdë/Novobrdo. In the claim she alleged to be the owner of 1/3 ideal apart of the parcel on which the house is built. She also declared that the house was usurped by unknown persons and that she lost possession over the property due to the armed conflict in 1998/99, indicating 12 June 1999 as the date of loss. The claim was registered at the KPA under KPA36438.
2. The Appellee provided the KPA with the following documents to support her claim:
 - The possession list no. 27, date 18 October 2005, by Directorate for Cadastre, Geodesy and Property. In the possession list the claimed property was registered in the name of S.D., the Appellee's father.
 - The Inheritance Ruling T.nr.249/89, date 10 January 1990 issued from the Municipal Court of Pristina, which shows that the Appellee inherited 1/3 ideal part of her father's fortune, including the claimed property. According to the Verification Report date 7 February 2011, this Ruling was found in the archive of the Municipal Court of Pristina/Prishtinë but it results that it did not become final.
3. The abovementioned documents were positively verified by the Executive Secretariat.
4. The claimed property was physically notified on 8 January 2008. From the notification it was found that the claimed property was a house with a yard and occupied by L.D., who was present in person during the notification process.

5. The claim was disputed by S.D. (hereinafter: the Appellant) who on 8 January 2008, signed the participation notification and stated that he is using the claimed property for residential purposes and he claimed property rights on it. On 8 January 2008, he approached KPA as a responding party. To support his allegations, the Appellant submitted a statement claiming that he is using the claimed property, which is his grandfather's house since 2000 and that he had taken the keys of it from his aunt J.D.. In his statement he alleges that the Appellee acquired the property unlawfully, by excluding other inheritors from the inheritance procedure. In support of his statement he added that he filed a law suit against his cousins /co-owners in the Municipal Court of Pristina/Prishtinë for confirmation of his property right over the claimed property.
6. In the case files it was found that the Executive Secretariat ex-officio conducted the verification and found the Appellant's law suit filed in the Municipal Court of Pristina/Prishtinë in 2008, was dismissed by a decision of this court. Moreover, the Appellant did not submit any other document in support of his allegations.
7. The Kosovo Property Claims Commission (KPCC), based on the evidence submitted by the parties, with its Decision KPCC/D/R/221/2013, dated 27 November 2013, decided to grant Z.S. claim and decided she stand to be the owner of 1/3 of the claimed property.
8. The Decision was served on the Appellant on 21 February 2014. On 3 April 2014, the Appellee was notified in regard to the Decision of KPCC.
9. On 17 March 2014, the Appellant filed an Appeal to the Supreme Court challenging the KPCC's Decision. Along with the Appeal, the Appellant filed law suit no.2614, dated 16 October 2008 and submitted it to the Municipal Court of Pristina, the branch in Graçanicë/Graçanica and an Appeal no.023570, dated 28 June 2010 against the Decision of the Municipal Court of Pristina/Prishtinë addressed to the District Court in Pristina/Prishtinë.

The allegations of the appellant

10. The appellant S.D. , alleged that the appealed decisions contains essential violations, erroneous application of the material law and erroneous and incomplete determination of the factual situation stating that upon rendering of the appealed decision the Commission did not take into consideration the law suit filed before the Municipal Court of Prishtina. In this claim, the appellant among others

explained that the claimed property was owned by the late S.D., his grandfather and that the inheritance procedure was not carried out after his death. He added that the claimed property was unlawfully and secretly registered under his uncle's name, S.D. and that after his death this property was inherited by his wife J.D. and two daughters Z.D. and S.K.. He stated that he is using the claimed property which at the same time is his grandfather's house since 2000 and that he took the keys from his aunt, J.D.. Regarding allegations of the appellee that he has lost possession of the claimed property as a result of the circumstances created as a result of the armed conflict during 1998-1999, the appellant explained that this statement is not true, as the appellee for over 30 years lives in Kragujevac and that the claimed property was not in use since 1977-1978.

Legal reasoning:

Admissibility of the appeal

11. The appeal against the decision of the KCCP no. KPCC/D/R/221/2013 is filed within 30 days from the moment the KPA served the decision to the appellant, as prescribed by Section 12.1 of the UNMIK regulation 2006/50 on the resolution of claims relating to private immovable property, including agricultural and commercial property, amended by Law No. 03/L-079 (henceforth: UNMIK Regulation 2006/50), is admissible.
12. From the review of case files and allegations of the parties it results that there is a conflict of ownership between the appellant and the appellee.
13. The appellee claims ownership over the claimed property based on the ruling on inheritance T.nr.249 / 89, dated 10 January 1990 issued by the Municipal Court of Pristina. On the other hand, the appellant, at the same time the uncle's son of the appellee challenges this decision as unlawful. The KPA verification team found that the aforementioned decision is not final and that a law suit was filed against it before the Municipal Court of Pristina, and later on an appeal is filed before the District Court of Pristina
14. From the statements of the parties it appears that the dispute between the members of the same family is from earlier time and that its origin has nothing to do with the armed conflict which occurred between 27 February 1998 and 20 June 1999. The fact that the appellee left Kosovo on 12 June 1999 means that occupation of her parcel by the cousin is related with the armed conflict and appellee's access to the property is made impossible.

15. Appellant's allegation that the appellee has not used property even before the armed conflict does not question the property right of the appellee and does not legitimize occupation of the property immediately after the conflict.
16. Based on the above, the Supreme Court finds that the appellant has failed to prove any property right over the property or present evidence that the KPCC has rendered a decision in violation of the provisions of procedural or substantive law.
17. Consequently, the Supreme Court finds that the KPCC has based its decision on the correct and complete determination of the factual situation and properly applied the substantive law. Therefore, the Supreme Court concludes that the appeal is unfounded.
18. Based on the abovementioned reasons, pursuant to article 13.3. (c) of the Law 03/L-079 and article 198 paragraph 1 of the Law on Contested Procedure, the decision of the KPCC is affirmed and the appeal is rejected.

Legal remedy

Pursuant to article 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

Krassimir Mazgalov, EULEX judge

Beshir Islami, Judge

Sandra Gudaityte, EULEX registrar