

SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA

KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË AKP-ës
ŽALBENO VEĆE KAI

GSK-KPA-A-099/2014

Prishtinë/Priština,

14 July 2016

In the proceedings of:

B. J. as heir of N. J.

Appellant / Respondent

vs.

S. R. M. as heir of R. O.

Appellee / Claimant

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of judges Beshir Islami, as presiding judge, Rolandus Bruin and Krasimir Mazgalov, as members of the panel, deciding on the appeal against the decision of the Kosovo Property Claims Commission (henceforth: the KPCC) KPCC/D/A/219/2013 dated 27 November 2013 (case file registered at the Kosovo Property Agency under no. KPA93046), after deliberation held on 14 July 2016, issues the following:

JUDGMENT

1. The appeal of B.J. filed against the Decision of the Kosovo Property Claims Commission no. KPCC/D/A/219/2013 dated 27 November 2013, as far as it concerns the claim registered as KPA93046, is rejected as unfounded.
2. The Decision of the Kosovo Property Claims Commission no. KPCC/D/A/219/2013, dated 27 November 2013, is confirmed as far as it regards the Claim registered with the KPA under No. KPA933046.

Procedural and Factual background

1. On 31 May 2007, S. R. M. (hereinafter as: Appellee) filed a claim before the Kosovo Property Agency (henceforth: the KPA), seeking confirmation of ownership rights and repossession over the property registered under the name of her late father R. O., cadastral parcels no. 503/1 and 503/2, in surface of 52 ar 41 m², registered in the possession list no. 140, cadastral zone Shajkovc/Sajkovac, Municipality of Podujevë/Podujevo (hereinafter: claimed property). Initially, she also claimed the cadastral parcel 504; however the KPA separated the claim for this property. She stated that the property is being used by unknown persons without any legal rights.
2. In support of her claim, the Appellee among others submitted the following documents:
 - Possession list no. 140 dated 26 April 2007 issued by Cadaster and Immovable Property Office in Podujevë/Podujevo, indicating that cadastral parcel 503/1 in surface of 0.45.32 ha, field of category IV, and cadastral parcel 503/2 in surface of 0.07.09 ha registered under the name of R. O., Appellee's father;
 - ID card issued by the parallel authorities dislocated in Serbia on 12 June 2001, with residential address in Prishtinë/Pristina;
 - Marriage certificate indicating that the Claimant is the daughter of R.;

- Copy of the plan dated 24 December 2010 where R. O. is registered as the owner.
3. On 11 June 2013, the KPA notified the claim and found that the notification was accurate based on GPS coordinates.
 4. On 3 July 2013, B. J. (hereinafter: Appellant) responded to the Claim and stated that the property was confiscated without any compensation during the Serbo-Croatian-Slovenian Empire and was given to the Appellee who used it until 1999. Later on, he stated that the property was purchased in 1980's but that that purchase was not registered, and that recently with a judgment of the Municipal Court of Podujevë/Podujevo of the 2008 he became the owner of the claimed property.
 5. In support of the response, the Appellant submitted the following documents:
 - The Final judgment C.nr.158/2008 dated 7 October 2008, which approved B. J. claim and confirmed that the same is the owner of the cadastral parcels 503/1 and 503/2;
 - A Certificate of ownership dated 19 November 2012, registered in the name of B.J.
 6. On 27 November 2013 the Kosovo Property Claims Commission (KPCC) by its Decision KPCC/D/A/219/2013, found that the Appellee proved that his father R. P. O. is the owner of 1/1 of the parcels 503/1 and 503/2, and that the Appellant was obliged to return the possession and other persons were ordered to vacate the claimed property within 30 days under the threat of forceful execution.
 7. In paragraphs 81-88 of the Decision, the KPCC reasoned that the Appellee proved that her father was the owner before the armed conflict. The Appellant presented the final judgment of the Municipal Court of Podujevë/Podujevo as evidence to prove that the Court recognized ownership to the Appellant in 2008. In this proceedings the Appellee did not participate. The KPCC held a hearing on 21 August 2013. Appellant referred to the Court's judgment, however he admitted that the Appellee was in possession until 1999 and that according to the cadastral registry the Appellee was the owner. The KPCC concluded that the Municipal Court did not have jurisdiction in this matter and that the Appellant did not present documents to prove that he acquired ownership over de claimed properties and that therefore the Claim had to be approved.
 8. The KPCC decision was served on the Appellant on 31 March 2014, whereas on the Appellee on 29 April 2014. On 30 April 2014 the Appellant challenged the decision before the KPA Appeals Panel of the Supreme Court. The appeal filed by the Appellant was

delivered to the Appellee on 21 May 2014. On 13 June 2014 the Appellee filed a response to the appeal. The Supreme Court received the case file on 20 May 2014.

Allegations of the parties

Appellant:

9. The Appellant alleges that the KPCC decision contains an essential violation, that it is based on an erroneous and incomplete determination of the factual situation and an erroneous application of the material provisions.
10. The Appellant states that the matter was resolved by the judgment of the Municipal Court of Podujevë/Podujevo and that no one from the Appellee's side appeared in these proceedings. Further the Appellant alleges that his claim and other supporting documents were denied in contradiction to the law.
11. In his appeal filed before the Supreme Court, the Appellant repeated the same allegations as the ones presented during the proceedings and hearing session before the KPA/KPCC. Therefore, the Appellant proposes to the Supreme Court of Kosovo to review his appeal, modify the appealed decision and send the case back to KPA/KPCC for reconsideration.

Appellee:

12. The Appellee in her response states that her father never sold the claimed property and that he was in unobstructed possession until June 1999. Furthermore, she states that the Judgment of the Municipal Court of Podujevë/Podujevo was rendered without her or any other family member's presence or knowledge. Finally, she proposes to the Supreme Court to reject the appeal as without merit and affirm the Decision of the KPCC.

Legal reasoning

13. The appeal is filed within the time limit of 30 days as prescribed by article 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: Law no. 03/L-079), and is admissible.

14. KPCC based its decision on the fact that the KPA Executive Secretariat among the documents submitted by the Appellee has positively verified the possession list no. 140. This possession list indicates that the claimed property is registered in the name of the Appellant's father.
15. The Supreme Court finds that the appealed decision is also based on the fact that the Appellant bases his allegation on the final judgment C.no.158/2008 dated 7 October 2008, which approved B. J. claim and confirmed that the same is the owner of the cadastral parcels 503/1 and 503/2 but that the same Judgment did not affect the jurisdiction of KPCC based on the provisions of the article 11.4 (c) which prescribes that: *"The Commission shall dismiss the whole or part of the claim where: (c) The claim has previously been considered and decided in a final administrative or judicial decision"*. In the case at hand, the Appellant's claim was filed at the Municipal Court on 15 April 2008 and also the Judgment of the court was rendered later than the UNMIK Regulation 2006/50, later amended by Law no. 03/L-079, entered into force on 16 October 2006. According to Section 18 of the UNMIK Regulation 2006/50 as amended by Law no. 03/L-079 the provisions of this Law apply to any claim under Section 3.1 of the Law which has been submitted to court provided that those judicial proceedings have not commenced prior to 16 October 2006. The claim at hand is within the jurisdiction of the KPCC in compliance with article 3.1 of the Law no. 03/L-079 which prescribes that KPCC shall have the competence to resolve the following categories of conflict-related claims involving circumstances directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999: a) ownership claims with respect to private immovable property, including agricultural and commercial property, and b) claims involving property use rights in respect of private immovable property, including agricultural and commercial property, where the claimant is not now able to exercise such property rights. As the claim before Municipal Court was filed after 16 October 2006 KPCC was competent to decide on the claim and not that Municipal Court. Therefore that judgment of the Municipal Court is decisive to assess whether the Appellant gained ownership over the claimed properties.
16. For the Court, the KPCC's conclusion in its decision that the Appellee has proved that he is the owner, whereas the Appellant did not present a valid defense and for this reason the

claim should be approved, is fair and lawful. Therefore, the Supreme Court finds the Appellant's allegations unfounded and inadmissible as far as it concerns the property rights over the claimed property.

17. Consequently, the Appellant failed to prove any property rights over the claimed property, and he also failed to successfully challenge KPCC's conclusion presented in its decision that the Appellee is the owner of the claimed property.
18. The Supreme Court found that KPCC based its fair and valid decision on proper and complete determination of the factual situation and properly applied the material law, and no violation of the procedural or material provisions could be found. Therefore, the Supreme Court finds the appeal unfounded.
19. Based on the above, pursuant to article 13.3 sub (c) of the Law no. 03/L-079, it is decided as in the enacting clause of the present judgment.

Legal Advice

Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by the Law no. 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies

Beshir Islami, Presiding Judge

Rolandus Bruin, EULEX Judge

Krasimir Mazgalov, EULEX Judge

Sandra Gutaityde, EULEX Registrar