

**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-85/2014

**Prishtinë/Priština,
14 July 2016**

In the proceedings of:

T.E.

Sraradran

Istog/Istok

Appellant

vs.

M.Z.

Lazarevacki drum Street No 7

Belgrade

Republic of Serbia

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of, Presiding Judge, Beshir Islami , Anna Bednarek, EULEX Judge and Krasmir Mazgalov, EULEX Judge, on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/A/211/2013 (the case file registered at the KPA under No KPA91342) dated 21 August 2013, after the deliberation held on 14 July 2014 issues the following

JUDGMENT

1. The Appeal of T.E. against the Decision of the Kosovo Property Claims Commission No KPCC/D/A/211/2013, dated 21 August 2013 is rejected as unfounded.
2. The Decision of the Kosovo Property Claims Commission No KPCC/D/A/211/2013, dated 21 August 2013, is confirmed as far as it regards the Claim registered with the KPA under No KPA91342.

Procedural and factual background:

1. On 20 July 2006, the Appellee (M.Z.) filed a Claim with the Kosovo Property Agency (hereinafter: the KPA) in capacity of family household member of her husband seeking the confirmation of property rights and the repossession of the land parcels: a part of the land parcel No 2177/3 with a partial surface of 00.13.00 ha (hereinafter: the claimed property) and the land parcel 2178/1 with the surface of 00.24.24 ha, both located in the village of Vitimirice/Vitimirica, Municipality of Pejë/Peč. The Appellee alleged that her husband and his brother, M., obtained property rights of the land parcels mentioned above on the basis of the Immovable Property Sales Contract No 1397/90 dated 26 December 1989 (hereinafter: the Purchase Contract No 1397/90 of 26 December 1989). The Appellee further explained that the claimed property remained registered under the name of the previous owner M.I. (hereinafter: the previous owner) as indicated in the Possession List No 1050 issued by on 12 March 2002.
2. To support her Claim, the Appellee submitted the following documents to the KPA:
 - The copy of the Marriage Certificate No 200-2/99/530, dated 9 June 1999 showing the family relationship between the Appellee and the alleged property right holder.
 - The copy of the Possession List No 1050 issued on 12 March 2002 in which it is stated that M.I. is the owner of the land parcels: No 2177/3 with the total surface of 00.08.69 ha and No 2178/1 with the surface of 00.11.74 ha.

- The copy of the Immovable Property Sales Contract No 1397/90, dated 26 December 1989, concluded between M.I. (as the seller), and M. and M.Z. (as the buyers) on a purchase of land parcels No 2177/3 and 2178/1 with the partial surface of 00.13.00 ha. The signatures below the Contract were legalised by the Municipal Court in Pejë/Peč on 14 June 1990.
3. The Claim was registered at the KPA under the number KPA13120. Later, the KPA has separated the Claims and a new Claim with the reference No KPA91342 was created. The original Claim registered under the No KPA13120 refers to the land parcel No 2178/1, while the Claim registered under the No KPA91342 regards the land parcel No 2177/3.
 4. On 28 December 2010, the notification of the Claim was done through the publication in the KPA's Notification Gazette No 10 and the UNHCR's Property Office Bulletin.
 5. On 28 December 2010, the Appellant filed a Response to the Claim claiming the legal rights to the property. To support his allegations, the Appellant submitted the following documents to the KPA:
 - The copy of the Contract on Purchase of the Real Estate No 9596/02, dated 25 January 2002 (hereinafter: the Purchase Contract No 9596/02 of 25 January 2002), concluded between M.I. (as the seller) and T.H.E. (as the buyer) on Purchase of the land parcels No 2177/2 with the surface of 00.06.90 ha, No 2177/1 with the surface of 00.08.69 ha and No 2178/1 with the surface of 00.11.74 ha. The signatures below the Contract were legalised by the Municipal Court in Pejë/Peč on 7 November 2002.
 - The copy of the Possession List No 1050 dated 22 December 2006, indicating that M.I. is the owner of the land parcel No 2178/1 with the surface of 00.06.33 ha.
 - The copy of the Possession List No 585 dated 22 December 2006, indicating that T.E. is the owner of the land parcel No 2177 with the total surface of 00.21.00 ha.
 - The copy of the Cadastral Plan of the parcels: No 2177/1, 2177/2, and No 2178/1 dated 20 March 1992 indicating the total surface of the mentioned land parcels as of 00.32.93 ha and the owner: M.I..
 - The copy of the Cadastral Plan of the parcel No 2177 dated 20 January 2006, indicating the surface as of 00.21.00 ha.
 - The copy of the Judicial Expertise submitted by the Department of Geodesy and Cadastre of the Municipality of Pejë/Peč in the case C. No 600/10 consisting of the

Cadastral Plan of the parcels: No 2177 (indicating the surface as of 00.21.00 ha), 2178/1 (indicating the surface as of 00.06.33 ha) and 2178/2 (indicating the surface as of 00.12.50 ha) dated 1 March 2011.

- The copy of the Judicial Expertise submitted by the Department of Geodesy and Cadastre of the Municipality of Pejë/Peč submitted in the case C. No 600/10 on 18 July 2011 which identifies measures and sets bordering line of the land parcel No 2177 (with the total surface of 00.21.00 ha) and the land parcel No 2178/1.
 - The copy of the Judgment of the District Court of Pejë/Peč rendered in the case Ac. No 24/12 on 5 March 2012 quashing the Judgement rendered by the Municipal Court in Pejë/Peč in the case C. No 600/10 on 20 October 2011.
6. On 30 November 2010, the KPA positively verified the Marriage Certificate No 200-2/99/530, dated 9 June 1999. The Civil Registration Office confirmed that the certificate was registered in the marriage books, which currently are in Kragujevac, Republic of Serbia. The same day, the Purchase Contract No 1397/90 of 26 December 1989 was verified in the Municipal Court of Pejë/Peč. The copy of the Contract was attached to the Verification Report
 7. On 9 December 2010, the KPA attempted to verify the Possession List No 1050 of 12 March 2002 submitted by the Appellee. In the Verification Report, the KPA indicated that the Department of Cadastre of the Municipality of Pejë/Peč has confirmed the existence of the Possession List No 1050; however, the list has been updated based on the Purchase Contract No 9596/02 of 25 January 2002. In this regard, the land parcel No 2178/1 was recorded in the Possession List No 1050 in the name of M.I.; while the land parcel No 2177/3 did not exist in the cadastral records. The Verification Report further notes that the land parcel No 2177 is listed in the Possession List No 585 under the name of the Appellant.
 8. On 30 October 2012, the KPA positively verified the Purchase Contract No 9596/02 of 25 January 2002 in the Municipal Court of Pejë/Peč. The copy of the Contract was attached to the Verification Report.
 9. On 21 August 2013, the Kosovo Property Claims Commission (hereafter: the KPCC), through its Decision KPCC/D/A/211/2013 (hereafter: the KPCC's Decision) granted the Claim and decided that there was enough evidence to establish the Appellee's ownership of ½ ideal part of the claimed property. In the reasoning of the Decision

(paragraphs 22-30), the KPCC noted the Appellee stated, that her husband was the co-owner of the parts of the land parcels No 2177/3 and 2178/1 with the total surface of 00.13.00 ha without specifying which parts of each parcel were subject to purchase. To support her Claim, the Appellee submitted the Purchase Contract No 1397/90 of 26 December 1989, and the Possession List No 1050 issued on 12 March 2002. The KPCC further noted that the Appellant alleged purchasing the claimed property. To support his position, the Appellant submitted the Purchase Contract No 9596/02 of 25 January 2002. The KPCC firstly noted the existence of discrepancy in the numbering of the claimed parcels as it is indicated in the cadastral records. The KPCC concluded that the land parcel No 2177/3 with the surface of 00.08.69 ha was listed erroneously in the outdated Possession List No 1050 issued on 12 March 2002, and should have been listed as the land parcel No 2177/1. The KPCC further explained the changes in the registration of the relevant parcels. Based on the Possession List No 1050 dated 12 March 2002, the land parcel No 2177/1 is of the surface of 00.08.69 ha, and the land parcel No 2178/1 is of the surface of 00.11.24 ha. Similarly, in the Purchase Contract No 9596/02 of 25 January 2002, it is indicated that the parcel No 2177/2 was with the surface of 00.06.90 ha, No 2177/1 was of surface of 00.08.69 ha and No 2178/1 was with the surface of 00.11.74 ha. After the latter Purchase Contract the land parcels No 2177/1, 2177/2 and a part of the parcel No 2178/1 (specifically 00.05.41 ha) were consolidated. Those parcels were consolidated into a new land parcel with the No 2177 and the total surface of 00.21.00 ha. The consolidated parcel No 2177 was registered under the name of the Appellant in the updated Possession List No 585. Whereas, the size of the land parcel No 2178/1 was reduced from 00.11.24 ha into 00.06.33 ha and registered in the updated Possession List No 1050 under the name of the previous owner.

10. Based on the mentioned analysis, the KPCC concluded, that the Appellee had provided enough evidence to show the ownership rights over the land parcel No 2178/1 with the surface of 00.06.33 ha (Claim No KPA13120). Taking into account that the Appellee purchased a total of 00.13.00 ha without specifying the purchased parts of parcels, the KPCC concluded, that the remaining part of the purchased land (specifically 00.06.67 ha) shall be considered as part of the land parcel No 2177. The KPCC further noted that the previous owner had sold the land parcel No 2177/1 twice. After concluding the purchase contract in 1989, the previous owner no longer possessed property rights over the part of

parcel No 2177/1 constituting 00.06.67 ha. As the result, the purchase contract concluded in 2002 with the Appellant could not transfer the property rights of the mentioned part of the parcel to the Appellant. As such, the KPCC constituted that the Claim registered under the No KPA91342 regarding the surface 00.06.67 ha of the land parcel No 2177 should be granted.

11. The KPCC's Decision was served to the Appellee on 20 December 2013. The Appellant received it on 17 December 2013. On 9 January 2014 the Appellant filed the Appeal against the KPCC's Decision. On 21 May 2014, the Appellee filed a Response to the Appeal.
12. On 9 November 2014, the Supreme Court requested the Appellee to submit her husband's death certificate and the inheritance decision, to explain the circumstances in which the property was lost, and to inform whether the Judgement of Municipal Court of Pejë/Peč was final. On 18 December 2015, the Appellee submitted the requested information.

Allegation of the parties

13. The Appellant alleges that the KPCC's Decision is based on an erroneously and incompletely established factual situation and an erroneous implementation of substantive law, and requests the Supreme Court to quash the KPCC's Decision. The Appellant further explains that he has purchased the agricultural property with the surface of 00.21.00 ha in 1994; however he was not able to register the transfer of the property in the records on his name due to discriminatory legislation. The second purchase contract was concluded with the previous owner in 2002. The Appellant alleges that the KPCC erroneously concluded that the surface of 00.06.67 ha is incorporated in parcel No 2177. The Appellant is of the opinion that this part of the land is outside the parcel No 2177 as it has been determined by the Judgement of Municipal Court of Pejë/Peč rendered in the case C No 191/12.
14. On 21 May 2014, the Appellee submitted the Response to the Appeal requesting the Supreme Court to reject the Appeal as ungrounded. The Appellee indicates that the Purchase Contract of 1994 submitted by the Appellant in his Appeal does not relate to the land parcel No 2177. She further submits that the KPCC correctly considered the Claim, based on the documents presented to it. The Appellee moreover indicates that

the Appellant is illegally occupying her property since 1999, and he wishes to prolong the illegal occupation by filing of the Appeal.

Legal Reasoning

15. The Supreme Court of Kosovo found that the appealed KPCC's Decision was issued in full and fair determination of the factual situation and on such grounds both the material and procedural law was properly applied; therefore, the Appeal is rejected as unfounded.

New Material Evidence

16. According to Section 12.11 of the Law No 03/L-079 amending the UNMIK Regulation 2006/50 (hereinafter: UNMIK Regulation 2006/50), *new facts and material evidence presented by any party to the appeal shall not be accepted and considered by the Supreme Court unless it is demonstrated that such facts and evidence could not reasonably have been known by the party concerned.* The Supreme Court notes that together with his Appeal, the Appellant submitted Contract on Sales and Purchase of Immovable Property, dated 15 July 1994. The Supreme Court notes that this contract was not presented to and considered by the KPCC during the first instance proceedings. Further, the Appellant did not provide any justification indicating why the Purchase Contract was not submitted during the first instance proceedings. For this reason, the Supreme Court considers the Purchase Contract of 15 July 1994 as the new evidence shall not be taken it into consideration while deciding the case.

Merits of the case

17. Firstly, the Supreme Court considers that the conclusion of the Commission referring to the numbering and the surface of all the mentioned land parcels is correct. The analysis in that regard was necessary as the Appellee in her Claim indicated the wrong numbers and surface of the then and now existing parcels. The Appellant however claims that the claimed land is outside parcel No 2177 as it is determined by the Judgement of the Municipal Court of Pejë/Peč rendered in the case number C 191/12. The Supreme Court notes that the proceedings before the Municipal Court of Pejë/Peč were initiated by the

Appellee on 5 February 2008 and later on amended on 10 September 2012. At the same time, the Appellee filed the subject Claim with the KPA on 20 June 2006. As such, the Appellee initiated the proceeding related to the same legal issue before two institutions, the one filed before the KPA being the first one.

18. The Supreme Court notes that the issue of jurisdiction of the KPA as compared to the one of that of the local courts is regulated by Section 18 of the the UNMIK Regulation 2006/50, which states: *the provisions of [the Regulation] shall apply to any claim under section 3.1 of the present Regulation which has been submitted to a court of competent jurisdiction, provided that judicial proceedings in respect of such claim have not commenced prior to that date of entry into force of the present Regulation.* This clause establishes that the claims filed with the KPA after the entry into the force of UNMIK Regulation 2006/50 shall be adjudicated by the KPA and not by the local courts. As such, the Supreme Court confirms that the KPA had jurisdiction over the Appellee's Claim and the fact that the Judgement rendered in the case C. 191/12 by the Municipal Court of Pejë/Peč does not exclude the jurisdiction of the KPA and thus of the Supreme Court. Hence it shall not be taken into consideration in the present proceedings.
19. For this reason, the Supreme Court follows the reasoning of the KPCC explaining the chronology of the registration of the land parcels No 2177/1, 2177/2, and 2178/1, and considers that the KPCC has correctly determined that the part of parcel No 2177 with the surface of 00.06.67 ha is a subject of the Claim KPA91342.
20. The Appellant claims that he is the owner of the entire parcel No 2177 as he purchased it from the previous owner in 2002. The Appellee, on the other hand, has presented a contract on purchase of a part of parcel No 2177 from the previous owner in 1989. Both contracts were certified by the Municipal Court in Pejë/Peč. Furthermore, the KPA verified the authenticity of both contracts. The Supreme Court concludes that the previous owner sold a part of parcel No 2177 with the surface of 00.06.67 ha twice.
21. The Supreme Courts notes that Articles 51(1) and 52 of the Law on Contracts and Torts (Official Gazette of SAP Kosovo No 40/53 and 57/54) (hereinafter: the Law on Contracts and Torts) stipulate that every contractual obligation must have a permitted ground, and in case there is no such ground, the contract shall be considered as void. The Supreme Court considers that the previous owner transferred the property rights to a part of parcel No 2177 with a surface of 00.06.67 ha after having concluded the Purchase Contract on 26 December 1989. With this Contract the property rights were transferred

to the Appellee's husband and his brother. As such, the previous owner did not have the legal title to transfer the ownership rights of the same part of parcel No 2177 once again to the Appellant. For this reason, the Supreme Court upholds the Decision of the KPCC to grant the Appellee's Claim related to part of parcel No 2177 with the surface of 00.06.67 ha.

22. The Supreme Court further notes that Article 54 of the Law on Contracts and Torts indicates that the party who *is in good faith may seek damages for loss suffered through entering into a contract having no legal effect*. To this end, the Appellant retains the right to seek damages in the competent court.
23. All the above mentioned reasons lead the Supreme Court to the conclusion that the KPCC has taken a correct Decision for the right reasons when accepting the Claim.
24. Consequently, the Appellant's Appeal is rejected as unfounded and the appealed KPCC's Decision is confirmed as correct and based on properly applied law, pursuant to Section 13.3 (c) of UNMIK Regulation 2006/50 as amended by Law No 03/L-079.

Conclusion

25. Based on the aforementioned and pursuant to Section 13.3.(c) of the Law No 03/L-079 amending the UNMIK Regulation 2006/50 and Article 195, paragraph 1(d) of the Law on Contested Procedure, it is decided as in the enacting clause of this Judgment.
26. This Judgment has no prejudice to the Appellant's right to refer the case to the competent court outside the jurisdiction foreseen by provisions of Section 3.1 of Law No 03/L-079.

Legal Advice

Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by Law 03/L-079, this Judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Beshir Islami, Presiding Judge

Anna Bednarek, EULEX Judge

Krasimir Mazgalov, EULEX Judge

Sandra Gudaityte, EULEX Registrar