

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-204/2014

Prishtinë/Priština,
8 September 2016

In the proceedings of:

S.Sh.

Village Novosellë
Prizren

Appellant

Vs.

P.P.

Bokokotorska 10,
34000 Kragujevac
Serbia

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of judges: Sylejman Nuredini, Presiding Judge, Anna Bednarek and Krassimir Mazgalov, members, deciding on the appeal against the Decision of the Kosovo Property Claims Commission No KPCC/D/A/227/2014 (the case file registered at the KPA under the number KPA07754), dated 13 March 2014, after the deliberation held on 8 September 2016, issues the following

JUDGMENT

1. The Appeal of S.Sh. filed against the Decision of the Kosovo Property Claims Commission KPCC/D/A/227/2014, dated 13 March 2014 (as it regards the case registered at the KPA under the number KPA07754) is rejected as unfounded.
2. The Decision of the Kosovo Property Claims Commission KPCC/D/A/227/2014 dated 13 March 2014, as it regards the case registered at the KPA under the number KPA07754, is confirmed.

Procedural and factual background:

1. On 29 December 2006 P.P. (*henceforth*: the Appellee) filed a Claim with the Kosovo Property Agency (*henceforth*: the KPA) seeking the confirmation of the property right and the repossession of a cadastral parcel No 4543, with the surface of 5 ares 64 m², registered in the Possession List No 14, Cadastral Zone of Verbiqan/Verbićane, Municipality of Prizren (*henceforth*: the claimed property). He declared that the property is being used by unknown persons without any legal right.
2. To support his Claim, the Claimant provided the KPA among others with the following documents:
 - The Possession List No 14 dated 10 November 2006 issued by the Institution for Cadastre and Real Estate of Prizren, which proves that the cadastral parcel 543 with the surface of 5 ares 64 m² is registered under the name of the Appellee P.P. ;
 - The ID card issued by the Authorities in Serbia, Kragujevac on 1 October 1997;
 - Later on the KPA Officials found the Ownership Certificate P-71813007-00543-0 proving that the claimed property is registered in the respective cadastral office under the name of P.P. .
3. According to the Consolidated Verification Report dated 20 August 2010, can be seen that the KPA verified positively the documents presented by the claimant.
4. The notification of the Claim was carried out on 29 August 2007. The property was found pasture occupied by S.Sh. (*henceforth*: the Appellant), who was present at the property. On 30 March 2010, based on GPS coordinates, the KPA confirmed that the notification of the claimed property is accurate.

5. On 29 August 2007 the Appellant received the Notification of the Claim and signed the Notice of Participation alleging on legal rights over the claimed property. He failed to present any documents, within specified time, to support his allegations.
6. On 13 March 2014, the Kosovo Property Claims Commission (KPCC) with the Decision KPCC/D/A/227/2014 found that the Appellee P.P. proved he was the owner of 1/1 of the cadastral parcel with the number 543, the possession was reinstated and other persons were ordered to release the property within 30 days under the threat of forcible execution.
7. In paragraphs 16-18 of the Decision the Commission reasons that the Appellee/Claimant proved he is the owner based on the documents verified positively by the KPA. The Commission concluded that even though the Appellant alleged legal rights over the property based on the informal transaction in 1985 he failed to present any valid defence and the Claim had to be approved.
8. The KPCC Decision was served to the Appellant on 9 June 2014. On 8 July 2014 the respondent challenged the KPCC Decision

Allegations of the parties

The Appellant:

9. The Appellant in his appeal alleges that the KPCC Decision contains substantial error, namely erroneous application of procedural law, and it is based on erroneously and incompletely established factual situation. He claims that the Commission did not examine his allegations that his property was bought in 1985 along with some other cadastral parcels.
10. In the proceedings before the KPA/KPCC he failed to present any evidence to support his allegations but in the Appel the Appellant claims that they made a transaction with the owner and along with some other cadastral parcels the property was purchased in 1985 for a total amount of 100 Million Dinars and that the informal transaction was carried out in the presence of two witnesses.

11. To support the Appeal he filed to the Supreme Court his uncertified written statement, claiming that the property was purchased in the presence of witnesses A.Xh. and a person named Raim, whose last name could not remember.

The Appellee/Respondent:

12. The Appeal was delivered to the Appellee on 29 January 2015, but he chose not to reply to the Appeal's allegations.

Legal reasoning

13. The Appeal was filed within (30) days, as foreseen by Section 12.1 of UNMIK Regulation 2006/50 on Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, as amended by Law 03/L-079, (*henceforth: the Law No 03/L-079*) and it is admissible.
14. The KPCC based its Decision on the fact that the KPA Executive Secretariat, among other documents filed by the Appellee, verified positively the Possession List and the Ownership Certificate.
15. The Supreme Court finds that the appealed Decision is also based on the fact that the Appellant did not present any transaction contract that would serve as supporting grounds for his allegations – that the Appellant had bought the claimed property. In fact the Supreme Court also concludes that the Appellant with the eventual transaction of the claimed property did not act in accordance with the criteria established by the legal provisions, which at the time of the claimed transaction as a condition it required to have a transaction contract in formulated written form with signatures of parties certified by the Court.
16. The Court assessed the finding of the KPCC Decision as correct and lawful that the Appellee – Respondent proved he was the owner based on documentation, whereas the Appellant failed to present any valid defence and for these reasons the Claims had to be approved. Therefore, the Supreme Court considers that the Appeal's allegations of the Appellant are unfounded and unacceptable as it regards to the property right over the claimed property.

17. Consequently, the Appellant in any way failed to prove any property right over the claimed property, and neither succeeded to properly challenge the findings of the KPCC indicated in the Decision, that the Appellee is the owner of the claimed property.
18. The Supreme Court finds that the KPCC based its just and valid Decision on correct and complete corroboration of the factual state, and the correct application of the substantive law. Therefore, the Supreme Court finds that the Appeal is ungrounded.
19. Based on the aforementioned and pursuant to Section 13.3 subpar (c) of the law No 03/L-079, it is decided as in the enacting clause of this Judgment.

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

Krassimir Mazgalov, EULEX Judge

Sandra Gudaityte, EULEX Registrar