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-087/2014

Prishtinë/Priština
19 October 2016

In the proceedings of:

1. **I.Sh.**
2. **A.Sh.**
3. **M.Sh.**
4. **S.Sh.**
5. **S.Sh.**
6. **K.Sh.**
7. **A.Sh.**

Trudë/Truda
Prishtinë/Priština

Appellants

Representative:
F.Sh.
Lawyer
Street A. Ramadani 10
Prishtina

vs.

M.T.
Lebanë/Lebane
Prishtinë/Priština

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Beshir Islami, Presiding Judge, Anna Bednarek and Krassimir Mazgalov, Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission (hereinafter: the KPCC) No KPPC/D/A/119/2011 (case file registered at the KPA under the number KPA90152), dated 7 September 2011 (hereinafter: the KPCC's Decision), after the deliberation held on 19 October 2016, issues the following:

JUDGMENT

1. **The appeal of I.Sh., A.Sh. , M.Sh. , S.Sh. , S.Sh. , K.Sh. and A.Sh. is accepted as grounded.**

2. **The Decision of the Kosovo Property Claims Commission No KPPC/D/A/119/2001, dated 7 September 2011, as far as the Claim No KPA90152 is concerned, is annulled.**

3. **The Claim No KPA90152 filed by M.T. is dismissed due to lack of jurisdiction of the Kosovo Property Claims Commission.**

Procedural and factual background

1. On March 14, 2007, M.T. (hereinafter: the Appellee) filed a Claim with the Kosovo Property Agency (hereinafter: the KPA), seeking the ownership right and repossession over cadastre parcel No 41, cadastral zone Nine Jugovic/Devet Jugović, in place called Plandiste, Municipality of Prishtinë/Priština, identified in the Possession List No 561 issued on 17 March 2004, and categorized as class 3 field, with a surface area of 0.80.15 ha (hereinafter: the claimed property). He stated that the property was occupied by unknown persons.
2. To support his Claim the Appellee submitted to the KPA *inter alia* the following documents:

- Judgment of the Municipal Court of Prishtinë/Priština rendered in the case No 316/94 on 26 October 1994. This Judgment annulled the Purchase Contract No 3501/63, dated 18 November 1963 that was concluded between the deceased L.T. and the Agricultural Cooperative 'Devet Jugoviq'. Therefore, the Appellee and another person were pronounced as the owners and should be returned into the possession of the claimed property.
- Possession List No 561, issued on 17 March 2004 by the Department of Cadastre, Geodesy of Municipality of Prishtinë/Priština. According to this Possession List the Appellee and two other persons are the owners of the 1/ 3 ideal part each of the claimed property.

3. On 26 March 2009 and 2 April 2009, the KPA positively verified the Judgment and the Possession List mentioned above.
4. On 16 January 2009 and on 16 March 2010, the KPA notified the Claim by placing a poster at the claimed property indicating that the property was subject of a claim and that the interested parties could submit their responses within 30 days. The property was found to be occupied by an unknown person. The efforts to identify the occupiers were unsuccessful, because according to the KPA's explanations, some local residents did not know who had occupied the property, while others did not want to indicate that person. On 17 March 2010, the KPA confirmed that the notification of the claim was correct. The confirmation of the correctness of the identification of the claimed property was done based on the GPS coordinates and Ortophotos.
5. As no party responded to the notification, the claim was considered as uncontested.
   On 7 September 2011, KPCC decided that the Appellee had confirmed that he was the owner of 1/3 ideal part of the claimed property and ordered that the Appellee was entitled to possession of the it, and that any person occupying the claimed property has to vacate it or he/she would have been evicted. In the reasoning (paragraph 12 of the Cover Decision), the KPCC noted that the Appellee, with the submitted pieces of evidence, has proven his right of ownership.7.On 20 December 2013, the Appellants filed an Appeal against the KPCC's Decision. Together with the Appeal, they submitted *inter alia*:
   - The Decision of the Municipal Commission for Return of the Land in xx/Prishtina, dated 13 June 1992 (No462-49/91). According to this Decision, *inter alia* the ownership right of I.A.M.S.S.K.A. Sh. over the 1/5 ideal part of the cadastral parcel No41 had been decided, with a total surface of 6h, 60ar and 76 square metres. The

final Decision of 30 July 1992 obligaed the Agricultural Cooperative "Devet Jugović" to hand over the property into the Appellant's possession as it had been confiscated from this family on 21 September year??;

- The Ruling of the Special Chamber of the Supreme Court, dated 23 April 2008, issued in the case SCC-08-0035. The parties to these proceedings were I.Sh. et al as the claimants and the Agricultural Cooperative (former Devet Jugovic), and the Appellee in the present case and two other persons as the respondents. From the Ruling it can be seen that the Appeellee had joined these proceedings. The claimants' claim for verification of their ownership rights over the claimed property was dismissed as inadmissible. The request for review of this Ruling, also filed by the appellants, was rejected with the Ruling of the Special Chamber of the Supreme Court dated 9 December 2008.

6. The Appeal was served on the Appellee on 29 April 2014. He did not file any Response to the Appeal.
7. On 16 December 2014, the Supreme Court served a Court Order on the Appellants. They were requested to clarify who was acting as the Appellant in the present case, because in the letter of the Appeal the Appellants were described as 'I.Sh. and others', and to clarify why the Appellants, following the claim notification of 16 March 2010, contacted by the KPA for the first time on 16 December 2010 did not participate in the proceedings before the KPA/KPCC.
8. Together with their Response, dated 19 December 2014, the representative of the Appellants submitted the authorisations of all seven Appellants and stated that they all were parties to the Appeal. To the second question, they responded as follows: they declared that they were first informed of the Appellee's claim before the KPA/KPCCC on 16 December 2013. They further declared that the Appellee knew as of 1992 as to who possessed the claimed property and that the Sh. family was using the claimed property. The Sh. family had contacts with the Appellee about the dispute. They further stated that on the claimed property work was done twice a year; when sowing and harvesting. They never saw or heard in the field that there was a pending proceedings related to the claimed property. They alleged that the Appellee should have informed the KPA as to who was using this land, and that the Appellee had sent them many mediators to vacate the land.

Allegations of the Appellant

9. The Appellants allege that the KPCC'S Decision is unlawful because it contains essential violations and wrongful application of the procedural and material law and was rendered with erroneous and incomplete determination of the factual situation. They consider that the Appellee managed to obtain the KPCC'S Decision by deceiving the KPCC, because he failed to present relevant facts before the KPCC. The Appellants allege that their family is the owner of the claimed property and that the Appellee knew that the land was in the possession of their family.

10. The Appellants further allege that their family acquired the ownership right over the claimed property based on the Decision 06 No 462-49/91, issued on 16 June 1992 by the Commission for Return of Land of the Municipality of Prishtinë/Priština. The family was not able to register the Decision in the Cadastre, because it had some boundary problems with several neighbours. However, since then the family cultivated the claimed property and had it in possession without impediments.

11. The Appellants further allege that they too made efforts to register the property in the Cadastre, but it was not possible to execute the Decision of the Commission for Return of Land because the Cadastre of Prishtinë/Priština Municipality *"did not execute any decisions, either Court decision or decision by the Commission for Return of the Land, nor any other Decisions related to the Socially-Owned Property, because of resistance from municipal leadership (Board of Directors) which refused to register these Decisions issued by Municipal and Judicial authorities prior to 1999, considering that those decisions were issued by the interim Serbian authorities and as such they should not be executed"*. According to the Appellants, this refusal continued until 2004 when the Legal Office of the Kosovo Trust Agency (KTA) returned the case to the Prishtina/Priština Cadastre because it was related to socially-owned property and suggested that there were no legal obstacles preventing them from executing the said Decision. After that, the Appellants learned that they could not execute the said Decision because the claimed property, based on the Judgment C.nr.316/94, rendered on 26 October 1994 by the Municipal Court of Prishtina/Priština, was registered under the name of the Appellee and two other persons. This Judgment annulled the Purchase Contract OV.nr. 3501/63 dated 18 November 1963, concluded between L.T. (deceased father of the Appellee) and the Agricultural Cooperative "Devet Jugović" from Bardhoshi. By the same Judgment, the claimed property (parcel No 41) was returned to the Appellee V.J. and R.M. (as inheritors of L.T.).

12. The Appellants allege that they contacted the Appellee in order to find a solution for the problem. Since they could not find a solution, they filed a lawsuit with the Special Chamber of the Supreme Court against the Appellee and the Agricultural Cooperative, seeking confirmation of their ownership right over the claimed property. With the Judgment SCC-08-0035, dated 23 April 2008, the Special Chamber of the Supreme Court dismissed the lawsuit as inadmissible by considering the case as adjudicated (res judicata) based on the Judgment of the Municipal Court in Prishtina/Priština C.no. 316/94 dated 26 October 1994.
13. The Appellants allege that the claimed property was given to them as compensation based on an agreement reached with the Agricultural Cooperative. The Appellee was aware of this agreement and complied with it, and never stated that he had a Court Judgment about the claimed property. Moreover, the Appellants declare that Appellee's reticence raises the suspicion that the Municipal Court's Judgment of 26 October 1994 may be forged.

Legal reasoning:

Admissibility of the Appeal

14. Since the Appellants were not parties to the proceedings in the first instance, the Supreme Court has to assess whether their appeal is admissible.
15. Taking into consideration the aforementioned circumstances, the Supreme Court concludes that placing of notification at the time when the farmers' activities in agricultural lands are limited, outside the season of agricultural activities, when there is possibility that due to location of the claimed property - being distant from the place of residence, has made the efforts of the KPA insufficient and as a consequence it should be considered that the **Appellants were not properly notified about the claim.**
16. Pursuant to Sections 12.1 of UNMIK Regulation 2006/50 on Resolution of Claims Related to Private Immovable Property, Including Agricultural and Commercial Property, amended by the Law No 03/L-079 (hereinafter: UNMIK Regulation 2006/50), as far as it is relevant here *a party* may file an appeal against the KPCC decision. According to Section 10.2 of UNMIK Regulation 2006/50 any person other than the claimant who is currently exercising or purporting to have rights to the

property which is the subject of the claim and/or any other person who may have a legal interest in the claimed property shall be a party in the claim and related proceedings, provided that such person informs the KPA of his or her intention to participate in the proceedings before KPA/KPCC within thirty (30) days of being notified of the claim by KPA.

17. The way in which claim was to be notified in these proceedings is foreseen by Section 10.1 of UNMIK Regulation 2006/50. According to this provision, the Executive Secretariat has to notify the claim to any person, other than the claimant, who is currently exercising or purporting to have rights to the property, or otherwise makes reasonable efforts to notify about the claim any person that might have legal interest in the property.

18. The Appellants declare that their family has been using the property for a long time, since the 90-ies. Consequently, there is no indication that they might have missed the sign and not be aware of the claim. Their allegation contained in the response to the Court Order that the claimed property is cultivated twice a year only, first when sowing and second when harvesting (on both pictures in the KPA's file, there is nothing cultivated in the claimed property), and that they never see the sign that was placed in the property did not see the sign.

19. The court considered that the Appellee's assertion that he does not know who is using the property is insincere and intentional, because both parties presented before the KPA documents that prove there was a property dispute between them since 1992. In addition, the Appellee did not challenge the Appellant's allegations even though he had the possibility of responding to the Appeal.

20. For this reason, through a procedural Decision dated 14 July 2016, the Court recognized the statues of a party of the Appellants with the reasoning that the Appellee did not provide the KPA with required information on current user of the property and the KPA cannot conclude that the Appellants were properly notified of the claim.

21. Pursuant to Section 3.1 of UNMIK Regulation 2006/50, the KPCC has competence to resolve the following categories of claims related to conflict, including circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999: (a) ownership claims related to private immovable property, including agricultural and commercial property, and (b) claims related to the right of using private immovable property, where the claimant is not able to exercise such property rights.

22.In relation to the this provision and Article 194 as read in conjunction with Article 182.2 (b) of Law No 03/L-006 on Contested Procedure (hereinafter: the LPC), the Supreme Court has to access *ex officio* whether the Commission had the jurisdiction to assess the Claim.

23.In that regard, it is necessary to determine whether the Appellee submitted the evidence showing that he was the owner of the claimed property, that he used it and that he lost its possession because of the conflict. The Appellee executed the Judgment through the registration in the Cadastre in 2004 (see Verification Report dated 26 March 2009), whereas the Appellant did not execute the Decision by the Administrative Body for return of the property due to the obstacles presented by the authorities according to his declaration. The cadastral data indicate that during the conflict the property was registered as socially-owned and only in 2004 it was registered under the name of the Appellee in the Kosovo cadastral records, whereas in the displaced cadastral records in Serbia the Appellee results as the owner. Article 20 of the Law on Basic Property Relations (Official Gazette of SFRY No. 6/80, 36/90 foresees that "*The property right can be acquired by law itself, based on legal affairs and by inheritance. The ownership right can also be acquired by decision of the government authorities in a way and under conditions determined by law*"- which implies the written form, legalisation by competent authorities and registration of the property in public records. Also the law No 03/l-154 on Property and other Real Rights currently in force in Article 36 foresees that " 1. *The transfer of ownership of an immovable property requires a valid contract between the transferor and the transferee as a legal ground and the registration of the change of ownership in the immovable property rights register".*

24.The Appellee did not prove that he had executed the Judgment before the war and that he had property rights and possession over the claimed property, and lost because of the conflict. The Appellee did not challenge the Appellant's allegations that he was in possession of the claimed property.

25.Based on information given to the KPA in response to the court order, it can be ascertained without any doubt that between the parties there is a property dispute referring to the claimed property, but which clearly falls outside the jurisdiction of the KPCC.

26.Based on the above and regardless of the fact whether the alleged right of the Appellee based on the aforementioned Judgment can still be valid, the Supreme Court ascertains that the KPCC's Decision contains erroneous application of legal procedural provisions and that the claim falls outside the jurisdiction of the KPCC, as the possession was not

lost as a result of conflict or circumstances related to it. For that reason the Decsion has to be annulled and the claim dismissed as inadmissible for it falls outside` the KPA jurisdiction.

27. Based on what was mentioned above, the Supreme Court decided as in the enacting clause of this Judgment.

Legal remedy:

28. Pursuant to Section 13.6 of the UNMIK Regulation 2006/50, this Judgment is final and cannot be challenged through ordinary or extraordinary legal remedies.

Beshir Islami, Presiding Judge,

Anna Bednarek, EULEX Judge

Krassimir Mazgalov, EULEX Judge

Sandra Gudaityte, EULEX Registrar