

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-220/2014

Prishtinë/Priština

19 October 2016

In the proceedings of:

Z.S.

Koretishte/Koretiste village

Gjilan/Gnjilane

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini Presiding Judge, Anna Bednarek and Beshir Islami, Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/A/220/2013 dated 27 November 2013 (case file registered at the KPA under the number KPA90310 after the deliberation held on 19 October 2016 issues the following

JUDGMENT

- 1. The Appeal of Z.S. against the Decision of the Kosovo Property Claims Commission KPCC/D/A/220/2013 dated 27 November 2013 with regard to the Claim registered with KPA under the number KPA90310 is rejected as ungrounded.**

2. **The Decision of the Kosovo Property Claims Commission KPCC/D/A/220/2013 dated 27 November 2013; with regard to the Claim registered with KPA under the number KPA90310 is annulled.**
3. **The Claim of Z.S. registered with KPA under the number KPA90310 is dismissed as inadmissible.**

Procedural and factual background

1. On 10 October 2007, Z.S. (henceforth “the Appellant”) filed a Claim with the Kosovo Property Agency (henceforth “the KPA”) in the capacity of the family household member of the property right holder: his now late mother S.S. . The Claim was registered at the KPA under the number KPA90310 and referred to the parcel No 1376/3 with a total surface area of 2.19.37 ha, situated at the place called “Jezero Sait Agin Zabelj” in Gjilan/Gnjilane (henceforth “the claimed property”).
2. In the claim intake form it is not mentioned whether the loss of the claimed property was related to the armed conflict that occurred in Kosovo between 1998 and 1999.
3. To support his Claim, the Appellant provided the KPA, among others, with the following documents:
 - The Minutes up.br.463-52/91, drafted on 6 March 1997 by the Commission of the Ministry of Agriculture, Water and Forestry in the Municipal Assembly of Gjilan/Gnjilane regarding the administrative proceedings related to the restitution of the land. It can be read in the Minutes that the Commission unanimously established that the conditions for the restitution of land were met and informed the parties (the representative of S.S. and the Agricultural Industrial Enterprise AIE “Mladost”) that they could enter into an agreement compensating S.S. with another corresponding land, provided that the expropriated land had already been transferred into private property. During the session, the parties entered into an agreement and S.S. was compensated with the claimed properties;

- The copy of the Birth Certificate of Z.S. No 77/1952 issued on 13 June 2007 under the No 200-6832/2 by the Municipality of Gjilan/Gnjilane;
 - The copy of the Death Certificate of the Appellant's mother No 02/2005 issued on 24 January 2005 under the No 03-203-205/V-21 by the Municipality of Gjilan/Gnjilane;
 - A copy of the claim filed on 10 June 2005 to the Special Chamber of the Supreme Court of Kosovo for the establishment of the property right over the immovable property claiming to recognize Z.S. as the owner of the claimed properties and of the other parcels;
 - The copy of the Decision taken in the case C.333/03 on 4 November 2005 by the Municipal Court in Gjilan/Gnjilane, in which the Court declared it was not competent to adjudicate the case as it fell under the jurisdiction of the Special Chamber of the Supreme Court of Kosovo;
 - The copy of the Decision of the Special Chamber of the Supreme Court of Kosovo issued in the case No SCC-05-0215 on 20 February 2006 on the basis of which the case was referred to the Municipal Court in Gjilan/Gnjilane.
4. Apart from the Decisions, the documents were negatively verified by the KPA. The Verification Team found ex-officio the Certificate for the Immovable Property Rights No P-70403013-01376-issued by the Municipal Cadastral Office in Gjilan/Gnjilane on 3 November 2009. From the Certificate it results that the claimed property is registered under the names of different owners: S.S., A.S., J.S., T.S.
 5. The initial notification of the Claim was carried out on 15 December 2008, but it was deemed as an incorrect one later on. During that notification the land was found to be a non-occupied pasture. The Notification Team of the KPA mentioned in the Notification Report that: "The property was found with the help of the local people and according to the map".
 6. The new notification was done on 17 June 2010 through the publication at the KPA Notification Gazette No 2 (distributed to the Municipality of Gjilan/Gnjilane, the Cadastral Office in Gjilan/Gnjilane, the Municipal Court in Gjilan/Gnjilane, and the KPA Gjilan/Gnjilane Reginal

office). In addition the Gazette was delivered to the UNHCR Regional Office and the Ombudsperson field office.

7. The case was considered as uncontested by the KPA due to the fact that no interested party approached the Agency.
8. With the appealed Decision KPCC/D/A/220/2013 dated 27 November 2013 the KPCC refused the Claim number KPA90310 with the reasoning that the Appellant did not lose the possession of the claimed property as a result of the armed conflict, but as a result of a voluntary sale prior to the conflict.
9. On 9 June 2014, the KPCC Decision was delivered to the Appellant.
10. On 24 June 2014 the Appellant filed an Appeal.

Allegations of the Appellant

11. The Appellant challenges the KPCC's Decisions as, according to him, it rests upon an erroneous and incomplete determination of the facts and as such deprived him "of the constitutional lawful right to use and register in the cadastral records in line with the Agreement No 463-52/91". He stated also, that the property was his "ownership until June 1999, invoking a valid agreement". He maintained that "it was being cultivated the arable surface area in 1997, 1998 and until 1999". He contested all the allegations that war activities in the area had not affected the loss of property and registration of it in the cadastral records. The Appellant moreover requested "why himself as citizen of Kosovo cannot achieve his administrative rights to register a valid agreement ". He clarified also that "because of the situation that emerged in Kosovo the agreement was left unregistered in the cadastral records in Gjilan/Gnjilane. (...) The property in the Agreement, the now late S.S. alienated after having signing it to Albanians from Gjilan/Gnjilane. The very same are now asking (the Appellant) to transfer the property rights on their behalf, they are blackmailing (the Appellant) and threat him". He added that the documents which can help him to prove the ownership right are destroyed due to the war.

Legal reasoning

12. 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 ground both the material and the procedural law was properly applied. Therefore, the Appeal is rejected as unfounded.

13. The KPCC concluded that the Appellant failed to show that the Claim involve circumstances directly related to or resulting from the 1998-1999 armed conflict, as the loss in fact was a result of the sale contract concluded in the year 1998. That circumstance however, cannot be found in the case file, as there are no documents or other evidence proving the potential sale of the owner at that time (1998). In his appeal the Appellant mentioned that currently his is under threat by the persons who had bought the land parcels, as they cannot register it under their names. No other evidence with that regard can be found in the case file.

14. It has to be stressed in this place that the Appellant in his Claim indeed did not indicate when the loss of possession took place and that it was related to the armed conflict. In the reasoning of the Claims Z.S. indicated only that since the situation in Kosovo occurred he kept trying to register the claimed properties under his name, but he was not successful. The Appeal instead contains the statement of the Appellant that the Decision of the KPCC violated his constitutional right to use and register the property under his name. The documents he submitted together with the Claim referred to the question of the registration of the property rights within the cadastral records. Those circumstances lead to a conclusion that in fact the content of the request of the Claim consisted of the motion to enable the Appellant to register the claimed properties under his name. The KPCC however, and the KPA Appeals Panel neither, is competent to examine the question of the execution of the Agreement signed by the parties during the administrative procedure long before the armed conflict of 1998/1999. Such a request falls outside the jurisdiction of the KPCC, even though, as the Appellant indicated, the conflict could have an impact on the difficulties in the registration of the property rights within the cadastral records.

15. In the opinion of the Supreme Court the Appellant did not prove that indeed he was in possession of the claimed properties before the conflict and that the loss of possession of them took place between 1998 and 1999 due to or was related to the armed conflict. The documents

submitted did not confirm that circumstance at all. It is not sufficient, for the Claim to be granted, to deny the content of the Decision of the KPCC. Those elements have to be proven without any doubt. None of the documents confirms that the Appellant or his late mother possessed the claimed properties before the armed conflict.

16. Moreover, the Appellant himself indicates in the Appeal that: “the property in the Agreement, the now late S.S. alienated after having signing it to Albanians from Gjilan/Gnjilane. The very same are now asking (the Appellant) to transfer the property rights on their behalf, they are blackmailing (the Appellant) and threat”. This statement clearly clarifies that the claimed properties were not in the possession neither of the late mother of the Appellant, nor in his already after 1991, long before the armed conflict started.
17. Therefore, the Decision of the KPCC establishing that the loss of possession took place before the conflict as a result of the sale contract was incorrect, neither the outcome of the proceedings in the first instance was. The Claim instead of being refused stands to be dismissed on the basis of the Article 182 § 2b), 195 § 2 and 198 § 1 of the Law on Contested Procedure (points 2 and 3 of the Judgment).
18. It is worth mentioning here that the Appellant submitted to the case file the documents confirming the circumstance that already in the year 2005 the claim for the confirmation of the property rights and the registration of the property under the name of the Appellant’s mother was filed to the Municipal Court of Gjilan/Gnjilane. Section 18 of the UNMIK Regulation 2006/50 as amended by Law 03/L-079 however foresees that “*The provisions of the present 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 the date of entry into force of the present Regulation*”. The fact that the claim with regard to the claimed property was filed to the Municipal Court before the UNMIK Regulation 2006/50 entered into force excludes the jurisdiction of the KPCC. Hence the Claim of the Appellant have to be dismissed also due to that fact.

19. For all the above mentioned reasons, pursuant to Section 13.3.(c) of UNMIK Regulation 2006/50 and Article 195, paragraph 1(d) of the Law on Contested Procedure, it is decided as point 1 of the enacting clause of this Judgment.

Legal advice

20. Pursuant to Article 13.6 of the Law 03/L-079 this Judgment is final and cannot be challenged through ordinary or extraordinary legal remedies.

Sylejman Nuredini, Presiding Judge

Anna Bednarek, EULEX Judge

Beshir Islami, Judge

Sandra Gudaityte, EULEX Registrar