

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-201/14

Prishtinë, Pristina

26 October 2016

In the proceedings of:

K.Š.

Appellant

Vs.

N/A

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of judges, Sylejman Nuredini, Presiding Judge, Krassimir Mazgalov and Beshir Islami, members, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission No KPCC/D/A/220/2013 (case files registered at the KPA under the number KPA17777) dated 27 November 2013, after the deliberation held on 26 October 2016, issues the following

JUDGMENT

The Appeal of K. Š. filed against the Decision of the Kosovo Property Claims Commission no KPCC/D/A/220/2013, dated 27 November 2013, with regard to the case file KPA1777, is dismissed as impermissible.

Procedural and factual background

1. On 1 September 2007, V. Š., (hereinafter: Claimant) filed a Claim with the Kosovo Property Agency (KPA), seeking confirmation of the ownership right on behalf of his mother M. Š. over cadastral parcel 305/2 later on as 33/1 with surface of 0.89.99 ha, located in the cadastral zone Kodralija, Municipality of Dečan/Dečan (hereinafter: claimed property). In his Claim she stated that she did not initiate the inheritance procedure and that he does not know who is using the claimed property.
2. To support his Claim, the Claimant submitted the following documents to the KPA:
 - Certificate on temporary allocation of the property issued by Yugoslav Kingdom, Agrarian Trustee, dated 25 July 1939 which proves that Agrarian Trustee gave to her father O. S. a surface of 00.89.80 ha from the cadastral parcel 305/2 (the claimed property);
 - Economy register for the years 1950-1951 without a date and stamp which proves that S. family looks after the immovable property in surface of 5.28.93 ha without mentioning the number of the parcel;
 - Uncertified power of attorney by which M. S. Claimant's mother authorized V.Š. in 1989;
 - a handwritten map showing the location of the claimed property;
 - ID card issued on 3 March 2004, in Podgorica.
3. On 20 March 2007, the KPA notified the claimed property and found out that the property was not occupied forest and pasture. On 1 July 2010, the KPA Team confirmed that the notification was accurate and that the notice was posted at the entrance of Kadrili village. The notification was published in the KPA Gazette No3 and in the bulletin of the UNHCR Property Office in Belgrade. No one responded to the Claim.
4. Based on the Verification Report dated 3 October 2013, the documents presented by the Claimant were negatively verified. The KPA *ex officio* obtained the Certificate for Immovable Property Rights dated 8 March 2012 which shows that the former cadastral parcel 305/2 was currently registered with the number 33/1 and under the name of the third party.

5. On 27 November 2013, the KPCC with its Decision KPCC/D/A/220/2013, rejected the Claim stating (paragraphs 145 and 146) that the Claimant failed to prove any property rights over the claimed property and that the KPA Executive Secretariat *ex officio* could not obtain any evidence in favor of the Claimant's allegation. The certificate on temporary allocation of 1939 could not be found in the public registry and based on cadastral data the claimed property has undergone through the changes and currently is registered under the name of the third party.
6. The KPCC Decision was served on the Claimant on 20 June 2014, and on 30 June 2014 K. Š., filed an appeal against the Decision of the Commission with the ID card issued on 16 March 2009 issued in Budva, Montenegro, attached to the appeal (hereinafter: Appellant)
7. On 20 May 2016, the Supreme Court issued an order requesting the Appellant to provide evidence showing that she is entitled to file an appeal on behalf of V. S. and to answer to the questions as to what is her family relation with the V.S.; or to provide a power of attorney from him. The Appellant was ordered to prove that she has a power of attorney or family relations with the V.S..
8. The Appellant did not provide any response in relation to the Court's order.

Allegations of the parties

9. The Appellant alleges that the property was registered in the land registry of 1939 and that the conclusion that the same is now registered under the name of the third party is inaccurate. He requested the Court to inform him as to how could the third party register the property under her name without valid documents.

Legal reasoning

Admissibility of the appeal

10. The Court noted that the Appeal was filed by the Appellant without valid power of attorney and without any evidence on family relations between the Appellant and the Claimant. For this reason, the Appeal is impermissible.
11. The Court found that the Appeal is impermissible based on article 186.3 of the Law no 03/L-006 on contested procedure (Official Gazette of the Republic of Kosovo No. 38/2008) (hereinafter: LCP) which prescribes that "*An appeal shall be impermissible if it was filed by a person not entitled to file an appeal*"

12. Also, based on the provisions of the article 5 of the Administrative Direction no. 2007/05 implementing UNMIK Regulation UNMIK/REG/2006/50 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, the Claimant does not meet the requirements. This because the Claimant does not have neither the capacity of the party nor the power of attorney to represent the property right holder. She did not prove that she is a close family member of the Claimant pursuant to article 1 paragraph 12 of the Direction, with regard to the definition of the “*Member of the family household*” means the spouse, ,children (born in wedlock or adopted) and other persons, whom the property right holder is obliged to support in accordance with the applicable law, or the persons who are obliged to support the property right holder in accordance with the applicable law,
15. Consequently, as a result of the lack of the valid power of attorney, the Court could not find any reason as to why the Appellant should be entitled to file an appeal, as a party for his own interest or as a representative of the Claimant.
16. Considering the Appeal as impermissible, the Court did not address the merits but found that the Decision of the Commission was issued in compliance with procedural and substantive law.
17. Based on the above and pursuant to article 13.3 subpar. b of the UNMIK Regulation 2006/50, as amended by the Law no 03/L-079, the Court decided as in the enacting clause.

Legal Advice

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

Sylejman Nuredini, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Beshir Islami, Judge

Sandra Gudaityte, EULEX Registrar