

SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA

KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË AGJENICISË KOSOVARE TË PRONËS-AKP-së
ŽALBENO VEÇE KOSOVSKE AGENCIJA ZA IMOVINU-KAI

GSK-KPA-A-052/15

Prishtinë/Priština

9 November 2016

In the proceedings of:

B. P. (son of the deceased M. P.)

Appellant

vs.

A. K.

Representative: B. L., lawyer

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Krassimir Mazgalov and Beshir Islami, Judges, deciding on the Appeals against the Decision of the Kosovo Property Claims Commission KPCC/D/A/228/2014 dated 13 March 2014 (case files registered at the KPA under numbers KPA93333 and KPA93357), after deliberation held on 9 November 2016 issues the following:

JUDGMENT

1. The Appeals of B. P., registered under the numbers GSK-KPA-A-052/2015 and GSK-KPA-A-064/2015 are joined in a single case under the number GSK-KPA-A-052/2015.
2. The Appeals of B. P., filed against Decision of KPCC/D/A/228/2014 (case files registered at the KPA under numbers KPA93333 and KPA93357), dated 13 March 2014, are rejected as unfounded.
3. The Decision of the Kosovo Property Claims Commission KPCC/D/A/228/2014 dated 13 March 2014, as far as it regards to KPA93333 and KPA93357 is confirmed.

Procedural and factual background

1. On 23 March 2007, M. P. (hereinafter: the Claimant) initially filed a Claim at the Kosovo Property Agency (hereinafter: the KPA) seeking for confirmation of the Ownership Right and Repossession over the cadastral parcel no 90/1, meadow with the surface of 1.27.15 ha (initially claimed at the KPA under the Claim No KPA32127) located at the place called “Piskote” at Municipality of Gjakova/Đakovica (hereinafter: the claimed property).
2. The Claimant declared that the possession over the claimed property initially was lost due to the armed conflict, indicating 15 June 1999 as the date of loss, but later on he had authorized A. K. (hereinafter: the Respondent) to divide the claimed property and create new cadastral parcels with purpose of selling them. The Respondent misused the Power of Attorney No 463/2004 certified before Municipality of Kragujevac on 9 October 2004 that was given to him and he manipulated with the claimed properties.
3. Together with the Claim, the Claimant provided the KPA with the following documents:
 - The Transcription of the Possession List no 1013 issued by Geodesic Authority of Republic of Serbia, Municipality of Gjakova/Đakovica, listing the claimed property on his name. The transcript does not contain the date of issuance.
 - A written Statement of the Claimant, dated on 23 March 2007 through which he declared that the Respondent, in a capacity of the owner of the Real Estate Agency “Kontakti” from Peja/Peč though Ms. M. M., the owner of the Real Estate Agency “Horizont” from Kragujevac contacted him and offered his services for mediation and sale of the claimed property. According to the statement, the Claimant agreed with the Respondent to sell the

claimed property for the price 1000 euro per ar. The first sale on the Claimant's account was made by the Respondent on 28 December 2004. Later on, the Claimant revoked the power of Attorney that was given to the Respondent but the Respondent abused with the revoked Power of Attorney and has sold a part of the properties. Besides selling the properties without the Claimant's consent, the Respondent usurped the rest of the properties and so far the he is not aware what the Respondent did with them.

4. From the findings of the Executive Secretariat of the KPA (Verification Reports dated on 7 and 13 February 2014) it is concluded that the claimed properties (cadastral parcel 90/1 and cadastral parcel 91/1) were divided into the new cadastral parcels as well as there were created new claims. The new number of Claims and Cadastral Parcels claimed by the Claimant are registered as follows:

Appeal and KPA Case number	Data concerning the claimed parcel
GSK-KPA-A-052/15 KPA32127, new claim no KPA93333	Parcel no 91/42 and Parcel no 91/42 both located at the place called "Piskote", with the total surface of 00.20.00 ha
GSK-KPA-A-064/15 (Initial claim no KPA32127, new claim no KPA93357)	Parcel no 91/63, located at the place called "Piskote", with a surface of 00.05.80 ha

5. The notification of the claimed properties was performed on 12 November 2013. It was found out that the properties were occupied by the Respondent who claimed legal right.
6. The Verification Report, dated on 7 February 2014 shows that the division of the cadastral parcels was done based on Cadastral Ruling No 952-02-347/04 dated on 11 October 2004 which was issued upon the Request of the Respondent in a capacity of an authorized person. Regarding the claimed properties the officials of the Department of the Cadaster of the Municipality of Gjakova/Đakovica confirmed that the properties have undergone many changes. The changes relate to the numbers and surfaces of the parcels because there were created new cadastral parcels as well as the new owners because the claimed properties were sold.
7. With its Decision KPCC/D/A/228/2014 dated 13 March 2014, the Kosovo Property Claims Commission (hereinafter: KPCC) dismiss the claims. In its reasoning, the KPCC stated that in these claims the Claimant did not lose possession over the claimed properties

as a result of the 1998-1999 conflict, but as a result of the voluntary disposal after the conflict, consequently, the claims fall outside of the Commissions jurisdiction.

8. The Claimant passed away on 13 May 2014 after the KPCC Decision was issued. The Decision was served on the Claimant's son, B. P. on 25 August 2014. On 22 September 2014, B.P.(hereinafter: the Appellant) filed an appeal against the KPCC Decision. The appeal was served to the Respondent (hereinafter: the Appellee) on 12 February 2014. He responded to the Appeal on 6 March 2015.

The allegations of the parties

The Appellant

9. The Appellant declared that the KPCC decision contains fundamental errors and serious violation of the substantive law and that the decision rests on erroneous and incomplete determination of facts.
10. The Appellant asserts that the claimed properties belonged to his father (M. P.) and now belongs to him as a successor. The reasoning of the KPCC Decision stating that his deceased father voluntarily alienated the claimed properties to the third party does not stand because the alienation occurred in illegal manner, thus, the civil and criminal proceedings have been initiated and they are still ongoing.
11. Finally, the Appellant seeks the KPA Appeals Panel of the Supreme Court of Kosovo not to allow further alienation of the claimed properties until the civil and criminal proceedings are over, meaning not to dismiss his claims.

The Appellee

12. The Appellee's response referred to the KPCC Decision no KPCC/D/A/227/2014 dated on 13 March 2014 (the Appellee has had a capacity of the Appellant while filing the Appeal against the Decision KPCC/D/A/227/2014). The Appellee denied the allegations of the Appellant by declaring the Appellant had sold the claimed properties through him as a representative.
13. The Appellee has confirmed that regarding the same issue the Appellant has initiated Civil Proceedings that relate to the compensation of the value of the real estate. The proceeding is

ongoing before Basic Court of Peja/Peč. Further, the Appellee gives the detail explanations relating to the stages of the court proceedings. He seeks from the Supreme Court to reject the appeals of the Appellant as ungrounded. According the Appellee the Supreme Court should declare itself incompetent on the grounds of litispence because there is already a civil case C. No. 196/12 pending at the Basic Court in Pejë/Peć with the claimed properties as well as the parties being the subject of that procedure.

14. To support his response to the Appellant's appeal, the Appellee submitted before the KPA Appeals Panel of the Supreme Court of Kosovo the following documents:

- A Power of Attorney No 463/2004 certified before Municipality of Kragujevac on 9 October 2004 through which the Appellant authorized the Real Estate Agency "Kontakt" from Pejë/Peć respectively its owner, A. K., to undertake all actions for measuring and physical division of claimed parcels 90/1 and 91/1 with a total surface of 07.27.14 ha registered in the Possession List no. 1013 at the Cadastral Zone Jahoc/Jahoc, Municipality of Gjakovë/Đakovica.
- A Letter Confirmation of the Municipal Assembly of Gjakova/Đakovica dated on 22 April 2005 giving its consent for division of the properties.
- The Decision No 952-02-347/04 issued by the Directorate of Cadaster of the Municipality of Gjakovë/Đakovica, dated 25 April 2005, for approving the request of the Appellant for physical division of parcels 90/1 and 91/1 and creation of new parcels. The request contains as well as the claimed properties as described at the table of paragraph 4 of the Judgment.
- A Power of Attorney No 3206/2005 certified before Municipality of Mitrovicë/Mitrovica on 8 September 2005 through which the Claimant authorised the Real Estate Agency "Kontakt" from Pejë/Peć, respectively its owner, A. K., to sell the parcels 91/19, 91/20, 91/22, 91/23, 91/24, 91/25, 91/26, 91/27, 91/28, 91/29, 91/30, 91/31, 91/32, 91/33 and 91/40 with total surface of 1.55.37 ha registered in Possession List No 70705037 – 00981 at the Cadastral Zone Jahoc/Jahoc, Municipality of Gjakovë/Djakovica.
- The Lawsuit filed by before Municipal Court of Gjakova/Đakovica on 18 December 2006. The Lawsuit was filed by the Appellant against the Appelle for payment of debt at the amount of 155.00.00 Euro.
- Various other documents (powers of attorney minutes of the Courts) which are not relevant for the case.

Legal reasoning

Admissibility of the appeal

15. The appeals are admissible. They have been filed within the period of 30 days prescribed in Section 12.1 of UNMIK Regulation 2006/50 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, as amended by Law No. 03/L-079.

Joining of appeals

16. According to section 13.4 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, the Supreme Court can decide on joined or merged appeals, when such joining or merger of claims has been decided by the Commission pursuant to Section 11.3 (a) the law. This section allows the Commission to take into consideration the joining or merger of claims in order to review and render decision when there are common legal and evidentiary issues.
17. The provisions of Law on Civil Procedure that are applicable in the proceeding before the Appeals Panel of the Supreme Court pursuant to Section 12.2 of UNMIK Regulation 2006/50, as amended by Law No. 03/L-079, as well as provision of Article 408.1 as read with Article 193 of the Law No. 03/L006 on Contested Procedure, provide for the possibility of joining of all claims through a ruling if that would ensure court effectiveness and efficiency of the case.
18. In the text of appeals filed by the Appellant, the Supreme Court observes that apart from a different case number for which the respective appeal is filed, the facts, the legal grounds and the evidentiary issues are exactly the same in two cases. Only the cadastral parcels, subject of the property right which is alleged in each claim, is different. The appeals are based on the same explanatory statement and on the same documentation. Moreover, the KPCC's legal reasoning for the claims is the same one.
19. The appeals registered under the numbers GSK-KPA-A-052/2015 and GSK-KPA-A-064/2015 are joined in a single case under the number GSK-KPA-A-052/2015.

Jurisdiction

20. According to Section 3.1 of the Law 03/L-079, the KPCC has the competence to resolve conflict related claims involving circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999. Thus, a Claimant is not only to provide his ownership right over a private immovable property but also to show that he or she is not now able to exercise such property rights by reason of circumstances directly related to or resulting from the armed conflict.
21. The KPCC decided that the matter is not in its jurisdiction since the loss of possession does not derive from the circumstances of the armed conflict but as a result of the voluntary disposal after the conflict.
22. The Supreme Court also concludes that the Ownership Right and Possession over the claimed properties is not lost because of the armed conflict of 1998-1999 in Kosovo. This conclusion is based on the confirmation of the cadastral officials that cadastral records were updated on the name of the new owners. Moreover, the Appellant's father, through his written statement dated on 23 March 2007, confirms that the Appellee, offered him his services for mediation and SALE of the claimed properties. The Appellant's father agreed with the Appellee to sell the claimed properties for the price 1000 euro per each are. Based on the written statement the first sale on the Appellant's father account was performed by the Appellee on 28 December 2004.
23. It is not contested between the parties that the Appellant's father was the property right holder of the claimed properties till 2004 but the loss of the property rights derives from an alleged Contract on Sale.
24. The first sale of the property allegedly took place on 28 December 2004 between the Appellant's father and the Respondent meaning quite some time after the conflict.
25. The Appellant alleges that the sale of the claimed properties occurred in illegal manner, thus, he has initiated Civil Proceedings for the compensation of the value of the real estate.
26. Nevertheless, whether the contracts are legally valid is not relevant in these proceedings. The allegation on forgery cannot be examined by KPCC or the Supreme Court herein. The alleged contracts, regardless of whether they are forged one or not, bearing the year 2004 indicates that the dispute at hand between parties is not directly related to or resulting from the armed conflict that occurred in Kosovo in 1998/99. This is the relevant fact to take into

account now as to the jurisdiction of the KPCC. The contested matter between the parties whether the contracts are forged or signed under pressure does not fall within the jurisdiction of the KPCC since it has no direct link with the armed conflict.

27. The challenged Decision of KPCC was issued in full and fair determination of the factual situation and on such ground both the material and procedural law was properly applied.
28. Therefore, the Supreme Court concludes that KPCC by dismissing the claim as falling outside its jurisdiction has rendered a correct decision. Consequently, the appeal has to be rejected as unfounded.
29. In the light of foregoing, pursuant to Section 13.3 under (c) of the Law 03/L-079, it was decided as in the enacting clause of this Judgment.
30. This Judgment is without prejudice of the right of the Appellant to pursue its alleged right before the competent court, if he considers it necessary.

Legal Advice

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

Sylejman Nuredini, Presiding Judge

Beshir Islami, Judge

Krassimir Mazgalov, EULEX Judge

Sandra Gudaityte, EULEX Registrar