

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 VEĆE KOSOVSKE AGENCIJA ZA IMOVINU-KAI

GSK-KPA-A-047/15

Prishtina,

16 November 2016

In the proceedings of:

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

Appellant

vs.

A.K.

Representative: B. L.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Beshir Islami and Krassimir Mazgalov, Judges, deciding on the appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/A/228/2014 (case file registered in KPA under KPA93325, KPA93330, KPAKPA93334 KPA93352, KPA93354 and KPA93358), dated 13 March 2014, after deliberation held on 16 November 2016, issues this:

JUDGMENT

1. Appeals of B. P., registered under GSK-KPA-A-047/2015, GSK-KPA-A-049/2015, GSK-KPA-A-053/2015, KPA-A-059/2015 GSK-KPA-A-061/2015 and GSK-KPA-A-65/2015, are joined into a single case under GSK-KPA-A-047/2015.
2. Appeals of B. P., filed against the decision KPCC/D/A/228/2014 (case file registered in KPA under KPA93325, KPA93330, KPAKPA93334 KPA93352, KPA93354 and KPA93358), dated 13 March 2014 are rejected as ungrounded.
3. The Decision of the Kosovo Property Claims Commission KPCC/D/A/228/2014 dated 13 March 2014, concerning KPA93325, KPA93330, KPAKPA93334 KPA93352, KPA93354 and KPA93358, is confirmed.

Procedural and factual background:

1. On 23 March 2007, M. P. (hereinafter: the Claimant) filed two claims with the Kosovo Property Agency (hereinafter: the KPA) seeking confirmation of property right and repossession of the cadastral parcel no. 91/1, a cultivated field with a surface of 5.99.99 ha (initially claimed before KPA with claim number KPA32129) and the cadastral parcel no. 90/1, a meadow with a surface of 1.27.15 ha (initially claimed before KPA with claim number KPA32127) both parcels located in Jahoc, at the place called "Piskote" in Đakova/ Gjakova Municipality (hereinafter: the claimed properties).
2. The Claimant stated that he initially lost possession over the claimed properties because of the armed conflict, indicating the 15 June of 1999 as the date of loss of possession, but later he had authorised A.K. (hereinafter: the Respondent) to divide the claimed properties and to create new cadastral parcels for the purpose of selling them. The respondent misused the authorisation given to him and manipulated with the claimed properties.
3. Together with the claim, the Claimant submitted in KPA the following documents:
 - Description of the Possession List no. 1013, issued by the Geodesy Authority of the Republic of Serbia, Đkovica/Gjakova Municipality, in which the claimed properties are listed in the claimant's name. The description of the possession list does not contain the date of issue.
 - A written statement by the Claimant dated 23 March 2007 in which he stated that the Respondent, in the capacity of owner of the real estate agency "Kontakti" from Peja, through Mrs. M.M, owner of real estate agency "Horizont" from Kragujevci, contacted and offered him his services for mediation and sale of the claimed properties. According to the statement, the Claimant agreed with the

Respondent to sell the claimed properties for 1000 Euros per ar. The Respondent carried out the first sale on behalf of the Claimant on 28 December 2004. Later, the claimant withdrew the authorisation given to the Respondent, but the respondent misused the withdrawn authorisation and sold a part of the properties. In addition to selling the properties without the Claimant's approval, the Respondent occupied the remaining part of properties and the claimant currently has no knowledge as to what the respondent did with the properties.

- Death Certificate no 203-790/2014 issued by Civil Registration Office of Arandelovac on 23 May 2014 showing M. P. passed away on 13 May 2014. The Death Certificate was submitted by B.P., the son of M. P.
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 Claims and Cadastral Parcels claimed by the Claimant are registered as follows:

Number of appeal and claim in KPA	Information regarding the claimed properties
GSK-KPA-A-047/15 (Initial claim no. KPA32129, new claim no. KPA93325)	Parcel no. 91/53 at the place called "Piskote", with a surface area of 00.60.00 ha
GSK-KPA-A-049/15 (Initial claim no. KPA32129, new claim no. KPA93330)	Parcel no. 91/1 at the place called "Piskote", with a surface area of 00.90.01ha
GSK-KPA-A-053/15 (Initial claim no. KPA32127, new claim no. KPA93334)	Parcel no.91/43 at the place called "Piskote", with a surface area of 0.15.02 ha
GSK-KPA-A-059/15 (Initial claim no. KPA93330 new claim no. KPA93352)	Parcel no.91/65 at the place called "Piskote", with a surface area of 00.09.01 ha
GSK-KPA-A-061/15 (Initial claim no. KPA32129, new claim no. KPA93354)	Parcel no. 91/45 at the place called "Piskote", with a surface area of 00.10.00 ha
GSK-KPA-A-065/15 (Initial claim no. KPA32127 new claim no. KPA93358)	Parcel no.91/64 at the place called "Piskote", with a surface area of 00.05.80 ha

5. The notification of claimed properties was done on 12 November 2013. It was found that in the cadastral parcel no. 91/58 there was an ongoing construction of a house and the remaining part of claimed properties were found to be occupied by the Respondent who was not present during the notification process.
6. The Respondent claimed legal right over the properties and presented the following documents supporting his allegations:
 - The Authorisation no. 463/2004, certified in the Municipal Court in Kragujevac on 9 October 2004 through which the appellant authorised the real estate agency "Kontakt" from Peja, respectively its owner A.K, to undertake all actions for measurement 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 in the cadastral zone Jahoc, Municipality of Gjakova.
 - A confirmation letter from the Gjakova Municipal Assembly dated 22 April 2005 giving the approval for division of properties.
 - A decision no. 952-02-347/04 issued by the Cadastre Directorate of Gjakova Municipality, dated 25 April 2005, on approval of the appellant's request for physical division of parcels 90/1 and 91/1 and for creation of new parcels. The request contains claimed properties as described in the table under paragraph 4 of this judgment.
 - A lawsuit filed in the Municipal Court in Gjakova on 18 December 2006. The lawsuit was filed by the appellant against the appellee for debt payment in the amount of 155.00.00 Euros.
 - Other various documents (authorisations, court minutes) that are not relevant for the court.
7. 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 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.
8. By the decision KPCC/D/A/ 228/2014 dated 13 March 2014, the Kosovo Property Claims Commission (hereinafter: KPCC) dismissed the claims. In its reasoning, the KPCC stated that the claimant did not lose possession over the claimed properties as a result of the conflict in the period 1998-1999, but as a result of **voluntary sale** after the conflict. Consequently, the claims fall outside the jurisdiction of the Commission.

9. The Claimant died on 13 May 2014; the KPCC decision was issued later. 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 on A. K. (hereinafter: the Appellee) on 12 February 2014. He responded to the appeal on 6 March 2015.

The allegations of the parties

The Appellant

10. The Appellant alleges that the KPCC Decision contains fundamental errors and serious violations of the material law and that the decision relies on wrongful and incomplete determination of facts.
11. The Appellant states that the claimed properties belonged to his father (M. P.) and now belong to him as his inheritor. The reasoning of KPCC Decision where it is said that his deceased father voluntarily alienated the claimed properties to the third party does not stand, because the alienation occurred unlawfully for which civil and criminal proceedings were initiated and which are ongoing.
12. In the end, the Appellant requests from the KPA Appeals Panel of the Supreme Court not to allow further alienation of claimed properties until the conclusion of civil and criminal proceedings; that is, not to dismiss the claims.

The Appellee

13. The Appellee's response refers to the Appeals filed against the decision KPCC/D/A/227/2014 dated 13 March 2014 (the Appellee was in the capacity of the Appellant while appealing the Decision KPCC/D/A/227/2014 dated on 13 March 2014). The Appellee denied the allegations of the Appellant by declaring the Appellant had sold the claimed properties through him as a representative.
14. The Appellee confirmed that regarding the same matter the appellant initiated civil proceedings concerning the compensation of the value of immovable property. The proceedings are ongoing before the Basic Court in Peja. Further, the appellee provided detailed explanations concerning the stages of the court proceedings. He requests from the Supreme Court to reject the appellant's appeals as ungrounded. According to the appellee, the Supreme Court has to be declared as having no jurisdiction because of litispendence since there already is a civil case C. Nr. 196/12 pending before the Basic Court in Peja with the claimed properties and parties that are subject of those proceedings.
15. To support his response, the appellee submitted the same documents as in response to the claim.

Legal reasoning

Admissibility of the appeal

16. The Appeals are admissible because they were filed within the 30 day period, as foreseen by Section 12.1 of the UNMIK Regulation 2006/50, as amended by the Law no. 03/L-079 on the Resolution of Claims relating to Private Immovable Property, including Agricultural and Commercial Property as amended by. The Appeals were examined pursuant to Article 194 of the Law no. 03/L-006 on the Contested Procedure (Official Gazette of the Republic of Kosovo no.38/2008) (hereinafter: LCP). In relation to the examination of the judgment ex officio, as well as for reasons mentioned and not mentioned in the appeal, the court found that the appeals are ungrounded.

Joining of appeals

17. 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 decisions when there are common legal and evidentiary issues.

18. 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.

19. 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 three 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.

20. The Appeals registered under the numbers GSK-KPA-A-047/15, GSK-KPA-A-049/15, GSK-KPA-A-053/15, GSK-KPA-A-059/2015, GSK-KPA-A-061/2015 and GSK-KPA-A-065/2015 are joined in a single case under the number GSK-KPA-A-047/15

Jurisdiction

21. 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.
22. 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.
23. 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, contacted him and offered 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 ar. Based on the written statement the first sale on the Appellant's father account was performed by the Appellee on 28 December 2004. This uncontested by the parties fact proves that the Appellant voluntarily disposed of the claimed properties.
24. The Appellant also indirectly confirmed the sale by alleging that the alienation of the claimed properties occurred in illegal manner, thus, he has initiated Civil Proceedings for the compensation of the value of the real estate.
25. The Supreme Court considers that the above mentioned facts lead to conclusion that the loss of the possession over the claimed properties does not derive from the armed conflict occurred during 1998-1999. The allegation of the Appellant regarding the validity of the alienation of the claimed properties cannot be assessed in these proceedings by the KPA Appeals Panel of the Supreme Court due to the lack of jurisdiction.
26. 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.

27. 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.
28. 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.
29. 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 UNMIK Regulation 2006/50, as amended by 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