

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-203/14

Priština/Prishtinë

25 January 2017

In the proceedings of:

S,M.

Str “Ace Joksimovića 58/24”

Beograd

Appellant

vs

Municipality of P.

Represented by: F.R. (the legal Representative of the Municipality)

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/220/2013 dated 27 November 2013 (case file registered at the KPA under no 33935), after deliberation held on 25 January 2017 issues the following

JUDGMENT

1. The Appeal filed by S,M. 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 No KPA33935 is rejected as unfounded.
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 No KPA33935 is annulled *ex officio* and the abovementioned claim is dismissed due to the lack of jurisdiction.

Procedural and factual background

1. On 31 May 2007, S,M. (henceforth: the Appellant) acting on behalf of her late father R.O., initially filed a claim under the number KPA33935 with the Kosovo Property Agency (KPA), seeking repossession of the cadastral parcels with the numbers 503/1, 503/2 and 504 with the total surface of 00.76.36 ha, located at the place called “Čikovac kod kuće”, village Shajkovc/Šajkovac, Municipality of P.. The Appellant stated that her late father is the owner of the claimed properties and that the loss of the possession is related to the armed conflict that occurred in Kosovo in 1998/99, indicating 4 July 1999 as the date of loss.
2. Subsequently the original claim has been separated into new claim under the number KPA93046 for cadastral parcel no 503/1 and 503/2. After the separation of the claim, the original claim KPA33935 contained only cadastral parcel no. 504 with the surface of 00.23.95 ha (henceforth: the claimed property).
3. To support her claim, the Appellant provided the KPA with documents as follows:
 - Marriage Certificate no 266 issued by Civil Registration Office of Municipality of Prishtinë/Priština on 23 May 1979 through which can be proven family relation between the Appellant and R.O..

- Possession List no 140 issued by Geodesic Institute of R. of Serbia, Office for Real Estate and Cadastre (Dislocated Cadastre) on 26 April 2007. The claimed property was registered on the name of the Appellant's father.
4. On 11 July 2013, the Executive Secretariat of KPA performed the notification of the claim. From the findings it results that the claimed property was occupied by Municipal Assembly of P. (henceforth: the Appellee). A.L., the Director of the Property and Geodesic Affairs signed the Notice of the Participation at the KPA proceedings by alleging that the claimed property has been owned by the Municipality of P. since 1960.
 5. The Executive Secretariat of the KPA verified the claimed property, both, before the Cadaster Office of the Municipality of P. as well as with the Dislocated Cadaster Archive in Kruševac/Serbia.
 - The Certificate for the Immovable Property Rights verified ex officio at the Municipal Cadastre of P. lists the claimed property on the name of the Appellee. There was no information provided based on which document the claimed property has been registered as such (verification report dated on 20 November 2012).
 - The Dislocated Cadastre, on the other hand, verified the claimed property on the name of the Appellant's father. However, neither the Dislocated Cadastre does not possess the evidence based on which document the Appellant's father became an owner of the claimed property (verification report dated 2 October 2013).
 6. Consequently, the Appellant has been contacted by Executive Secretariat of KPA asking her to provide additional information/documents relating to the transfer of the ownership right on the name of her father. The Appellant declared being surprised with the findings of the Executive Secretariat since the claimed property was in continuous and uninterrupted possession of her father but she has no other document to present before the Commission (page no 253 and 254 of the case file).
 7. On 27 November 2013, the Commission with its decision KPCC/D/A/220/2013 refused the claim with the reasoning that the Claimant has failed to show the ownership or any other property right over the claimed property immediately prior to or during the 1998-1999 conflict.
 8. On 29 April 2014, the KPCC Decision was served on the Appellant. The same Decision was served on the Appellee on 14 April 2014.
 9. On 21 May 2014, the Appellant filed the Appeal. The Appellee received the Appeal on 2 December 2014 while he response on the Appeal on 14 January 2015.

The Allegation of the parties

The Appellant

10. The Appellant alleges that the KPCC Decision is based on incomplete determination of the factual situation and misapplication of material law
11. The Appellant alleged that the KPCC's reasoning that Executive Secretariat of KPA failed to obtain *ex officio* any evidence establishing the legal basis of the ownership right of her father is not true.
12. According to her, the claimed property was registered on the name of her father in 1992. This was done based on the Judgment No. 39/90 issued by Municipal Court of P. on 24 May 1990 which became final on 27 February 1991. Unfortunately, she does not possess the said Judgment.
13. In support of the appeal she submitted:
 - Copy of the list of changes ordinary No 1 for year 1992 with reference number 1/2014-650 dated on 15 May 2014 allegedly issued by Cadastre Municipality of P..
14. By the end of her Appeal, the Appellant noted that her parents possessed the claimed property until 1999 when they were forced to leave Kosovo and proposed that the Supreme Court accept her Appeal as grounded and confirm the ownership right over the claimed property on the name of her father.

The Appellee

15. On 27 June 2016 a Court Order was served to the Municipality of P.. This Court Order says:

The Supreme Court requests from Municipality of P. to provide to the Supreme Court within two weeks after receiving this Order:

a valid power of attorney of F.R. to represent the Municipality of P. in this case.
16. Acting upon the Court Order, the Municipality of P. attached the Power of Attorney No 02-216-7040 dated on 28 January 2014, which states that F.R. as the legal representative of

the Municipality of P. is authorised to represent the Municipality before all the Courts regarding all the cases on which the Municipality is the party to the proceedings.

17. The Appellee pretends that the claimed property has been and still is registered as Municipal Property.
18. Based on the Appellee, the Appellant alleges the claimed property was transferred on the name of her father in 1992 at the cadastre registries relocated from Kosovo to Serbia. According to the laws in force before and after the conflict, the property that is located within the Municipal Territory can be transferred only within the same Municipal territory where the property is situated. Therefore, the Appellee requests the Appeal to be rejected as ungrounded.
19. The same evidences that were considered by the first instance were attached to the Response on the Appeal.

Legal reasoning

Admissibility of the appeal

20. The Appeal is filed within the time limit of 30 days set in Law No. 03/L-079 Article 12.1 and is admissible.

Merits of the appeal

21. The Supreme Court of Kosovo reviewed the Appeal pursuant to provisions of Article 194 of Law on Contested Procedure Law No.03/L-006 (henceforth: the LCP), and after the assessment of allegations in the Appeal it found that the Appeal is ungrounded.
22. The Decision of the KPCC has to be annulled *ex officio* as the case does not fall within its jurisdiction. The KPCC had not to decide on the merits of the case but to dismiss it - Section 11.4 (b) of the Law No. 03/L-079. As this has not been done the Appealed Decision *ex officio* has to be annulled and the claim dismissed (argument after art. 198 (1) of the LCP which is applicable *mutatis mutandis* for the procedure in front of the Appeals Panel of the Supreme Court under section 12.2 of the Law No. 03/L-079. According to

Art. 198 (1) of the LCP, if the first instance has taken a Decision over the claim which does not fall within its jurisdiction the court of second instance has to annul the Decision and dismiss the claim.

23. In this particular case the Appellant considers that her late father become the owner of the property. She presents the Possession List no 140 dated on 26 April 2007 which was issued by Dislocated Cadastre of Kruševac/Serbia.
24. The KPCC has given a Certified Decision on 27 November 2013, the Decision made a reference to “relevant paragraphs” in the Cover Decision. Paragraph no 49 of the Decision says:

“The Commission notes that there is a discrepancy between the records in the cadastral office in P. and those in the dislocated cadastral archives in Serbia for F.R. . While the claimed property is registered as Municipal Property in the archives in Kosovo, the alleged Property Right Holder is identified as the owner in the dislocated archives. The Executive Secretariat of KPA was unable to locate ex officio any supporting documents in order to establish the basis for registration in either of the cadastral archives, nor was this provided by any parties. As a result, the Executive Secretariat could not verify the basis on which the Claimant allegedly accrued the ownership rights over the claimed property and as such the basis for the registration of the claimed property in the name of the Claimant in the dislocated archives”

25. According to Article 20 of the Law on Basic Property Relations (OG SFRY, No 6/1980, applicable at the time of the alleged transfer of the property (as pointed by the Appellant it occurred in 1990), the property right can be acquired by law itself, based on a legal transfer (legal affair) or inheritance
26. Because it was established that there is a discrepancy between the records in the Cadastral Office in P. and those in the Dislocated Cadastral Archives in Kurševac/Serbia for Municipality of F.R. , the Appellant was asked by the Executive Secretariat of KPA to provide the document which served as a legal bases for the transfer of the claimed property on the name of her father.
27. The Appellant, although contacted by the Executive Secretariat, did not provide any other document to prove the legal basis of the transfer of ownership right on the name of her father. Neither the Executive Secretariat was able to obtain any evidence ex officio, beside its efforts to do so. This leads the Court to the conclusion that the conditions defined at the Article 20 Law on Basic Property Relations (OG SFRY, No 6/1980) are not met.

28. At the appellate stage, the Appellant declared that her father gained the ownership right based on the Judgment No. 39/90 issued by Municipal Court of P. on 24 May 1990 which became final on 27 February 1991, but without providing the alleged Judgment.
29. Nevertheless, Section 12.11 of the Law No. 03/L-079 provides:
“New facts and material evidence presented by any party of the appeal shall not be accepted and considered by the Supreme Court unless it is demonstrated that such facts and evidence could not reasonably have been known by the party concerned”. The Appellant easily could have shared this information with the Executive Secretariat at the first instance; hence, the Court will not consider the Appellant’s declaration.
30. Currently, the claimed property is registered as the Socially Owned Property on the name of the Municipal Assembly of P..
31. Since the Appellant has failed to prove her father’s ownership right over the claimed property, the Supreme Court finds that the claimed property is either publicly or socially owned property. According to Article 3.1 of Law No. 03/L-079 the competence of the KPCC is limited to “private immobile property”. Therefore, the Appellant’s Claim falls outside the jurisdiction of the KPCC.
32. In the light of this, based on Section 12.2 of Law 03/L-079 and Article 198.1 of the LPC the Court decided as in the enacting clause of this Judgment.
33. Pursuant to Article 3.2 of Law 03/L-079, the Appellant has the right to pursue before the Court of competent jurisdiction the claim that do not involve the claims as described in 3.1 of the same law.

Legal advice

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

Krassimir Mazgalov, EULEX Judge

Beshir Islami, Judge

Sandra Gudaityte, EULEX Registrar