

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-107/15

Prishtinë/Priština,
22 March 2017

In the proceedings of

M. K.

Prizren

Appellant

Vs

M. G.

Beograd

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 appeal against the Decision of the Kosovo Property Claims Commission (hereinafter: the KPCC), KPCC/D/C/240/2014 (case file registered with the KPA under No KPA14007) dated 30 April 2014, after the deliberation held on 22 March 2017, issues the following

JUDGMENT

1. The appeal of M. K. against the Decision of the Kosovo Property Claims Commission KPCC/D/C/240/2014 dated 30 April 2014 with regard to the claim registered with the KPA under no KPA14007 is rejected as ungrounded.
2. The Decision of the Kosovo Property Claims Commission KPCC/D/C/240/2014 dated 30 April 2014, with regard to the claim registered with the KPA under no KPA14007 is confirmed.

Procedural and factual background

1. On 28 July 2006, M. G. (hereinafter: the Appellee) filed a claim on behalf of his late mother, V. G. with the Kosovo Property Agency (hereinafter: KPA) seeking re-possession of Cadastral Parcel No 3331, business premise with the surface of 22 m², located at street “M.Tita no 10”, Municipality of Prizren (hereinafter: the claimed property). He alleged that his mother is the owner of the claimed property which is usurped by family K.
2. In support of his claim the Appellee submitted with the KPA the following evidence:
 - Possession List no 3367 issued by Department for Cadaster, Geodesy and Property of Municipality of Prizren listing the claimed property under the name of V. G.
 - Death Certificate No 2481/1982 issued by Civil Registration Office of Municipality of Prizren on 3 December 2004 showing V. G.- C. passed away on 4 May 1982 at Prizren.
 - Birth Certificate No 116/1930 issued by Civil Registration Office of Municipality of Prizren on 7 April 2005 proving family relation between the Appellee and V. G.
 - Lawsuit filed for release of the property and unjust enrichment, filed by the M., S. and M. G. against Gj. and K. K. The Lawsuit was filed on 2006 at Beograd.
3. On 27 March 2008 the KPA notified the claimed property which was found to be a shop occupied by L. K. (hereinafter: the Appellant) who claimed having permission by the legal owner to occupy the property, however, the he stayed passive during all proceedings before the KPA.
4. The Executive Secretariat of KPA verified positively the Possession List No 3367 and other evidences submitted by the Appellee.

5. The attempted of Executive Secretariat to inform the Appellant about findings and to advise him to submit the evidence in support of his allegation failed because his legal representative declared that the Appellant is in jail while the Appellants uncle (M. K.) is in current possession of the claimed property (page 066 of the case file).
6. On 30 April 2014, the KPCC with its Decision KPCC/D/C/240/2014 decided that the Appellee has established the ownership right of V. G. over the claimed property and decided to return the claimed property into the possession of the Appellee.
7. On 30 March 2014 the Decision was served on the Appellee.
8. The Appellant received the Decision on 8 September 2014. The appeal was filed on 7 October 2014.

Allegations of the Appellant

9. The Appellant alleges that the KPCC's Decision contains essential violation of the substantive and procedural law and erroneous and incomplete determination of the factual situation.
10. The Appellant declared that, the Appellee had sold the claimed property to Gj. and K. K. with the purchase price of 120.000 DM. The said amount of money was delivered to Appellee. The Contract on Sale was concluded on 20 May 1991. According to Appellant, the Appellee admitted that the claimed property is registered in the name of his late mother, V. G., therefore, the Contract on the Sale was concluded only to ensure the transfer of ownership right on the name of the buyer's after the inheritance proceedings be completed.
11. The Appellant enclosed with her appeal the following documents:
 - Contract on Sale concluded on 25 December 1998 between M. G. as the seller and K. K. as the buyer of the claimed property. The Contract in not legalized.
 - Written statement, certified under No 6381/2006 before Municipal Court of Prizren on 27 November 2016, whereby, H.R. declared that he was present when K. K. had bought the claimed property from the Appellee.
 - Written statement, certified under No 6380/2006 before Municipal Court of Prizren on 27 November 2016, whereby, K. K. declared that he bought the claimed property from the Appellee on 25 December 1998.

Legal reasoning

Admissibility of the appeal

12. The Supreme Court reviewed the challenged Decision pursuant to the provisions of Article 194 of the Law on Contested Procedure No 03/L-006 (henceforth: LCP) and after the assessment of the Appellants allegations found that:
13. The appeal is admissible because it has been filed within the legal deadline pursuant to Section 12.1 of the Law No. 03/L-079 which provides that the party may file an appeal against the Commission's Decision within thirty (30) days from the notification of parties about the Decision.

Merits of the appeal

14. After reviewing and assessing the case file submissions and Appellant's allegations, the Supreme Court notes that the appeal is ungrounded.
15. The KPCC Decision is correct. The Court could not find an incomplete determination of facts or misapplication of the substantive and procedural laws.
16. According to Section 3.1 of the Law No 03/L-079, the Claimant has a right to an order from the KPCC for repossession of the property if the Claimant not only has established his/her ownership right over the private property but also that he/she now is unable to exercise such property rights over the respective property because of circumstances directly related to or resulting from the armed conflict that has occurred in Kosovo between 27 February 1998 and 20 June 1999.
17. The Supreme Court notes that the Appellant, while alleging legal right over the property, has failed to present any documentation or other information to support the claimed right neither at the time when the property was notified nor during the proceeding before the first instance even though he was given the opportunity to do so.
18. He has enclosed only with his appeal the new evidences.
19. Based on Article 12.11 of the Law 03/L-079, new facts and material evidence presented by any party to 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.
20. From the abovementioned facts results that the factual situation in relation to this legal case has been correctly and fully established and that the KPCC Decision has not been contested by any valid evidence.
21. In light of the above and pursuant to Section 13.3 (c) of the Law no. 03/L-079, the Court decided as in the enacting clause.

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

Krassimir Mazgalov, EULEX Judge

Beshir Islami, EULEX Judge

Sandra Gudaityte, EULEX Registrar