

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-138/15

Prishtinë/Priština,
27 September 2017

In the proceedings of:

N.J.
Gavrila Principa A1/19
38220 Mitrovica

Apellant

Vs.

Q.H.

Appellee

KPA Appeals Panel of the Supreme Court of Kosovo, composed of Beshir Islami, Presiding Judge, Krassimir Mazgalov and Shukri Sylejmani, Judges, deciding on the appeal against the decision of Kosovo Property Claims Commission KPCC/D/A/244/2014 (case file registered in KPA under KPA10804), dated 18 June 2014, after deliberation held on 27 September 2017, issues this:

JUDGMENT

The decision of the Kosovo Property Claims Commission KPCC/D/A/244/2014 (case file registered at the KPA under number KPA10804) dated 30 April 2014 is annulled and the claim is dismissed due to the lack of jurisdiction.

Procedural and factual background:

1. On 17 November 2006, N. J. (hereinafter: Appellant) filed a claim with Kosovo Property Agency (hereinafter: KPA) seeking confirmation of property right and repossession of cadastral parcel no. 814, cultivated field with a surface of 0.38.15 ha, at the place called “Adžin Potok”, cadastral municipality Vërrnicë/Vrnica, Vushtrri/Vučitrn Municipality (hereinafter: claimed properties). Initially, parcel 813 was also claimed, but since it had already been referred and resolved by the Commission as uncontested, the Agency Secretariat had separated the Claim KPA10804 only for parcel 814. He alleges that he acquired $\frac{1}{4}$ of the ideal part of property through inheritance from his grandfather M, which he lost in July of 1999. For this property, as co-ownership to the ideal part, claims KPA22979 and KPA90620 were filed as well.
2. Together with the claim, claimant provided KPA with the following documents:
 - Description of possession list no. 63, Cadastral Municipality Vernicë, issued by parallel bodies of Vushtrri Municipality displaced in Serbia on 15 July 2003 which proves that claimed property was registered in the name of M. J., appellant’s grandfather;
 - Inheritance Ruling O.Nr.61/81, dated 6 January 1983, issued by the Municipal Court in Vushtrri by which D., widow of M. J, was declared as inheritor of the entire property after M. death;
 - Inheritance Ruling O.Br.13/97, issued by the Municipal Court in Vushtrri, by which appellant’s father, R. J., was declared as inheritor of $\frac{1}{4}$ of the entire property after D. death.
 - Copy of possession list issued by the cadastral office in Vushtrri, dislocated in Serbia on 15 July 2003 which shows that claimed property is registered in the name of M.J. claimant’s grandfather.
 - Death certificate issued by parallel bodies in Vushtrri Municipality on 19 June 2001 which proves that claimant’s father R. J. died on 10 June 2001.
 - Inheritance Ruling O.Br.34/2001 dated 24 December 2001 issued by the Parallel Court in Vushtrri displaced in Serbia by which appellant was declared as sole inheritor of property of the deceased R. J., father of the claimant.
 - Identification card issued by parallel bodies of Mitrovica on 16 December 1999.

- Later, KPA Secretariat had found that through Inheritance Ruling Ov.Br. 38/2010, dated 11 May 2010, his grandfather's inheritance was examined and that his father was not the inheritor of grandfather's property. For this, they also found the ownership certificate dated 19 March 2014 (see page 143 of referral report for KPCC and verification report dated 24 April 2014 which also refers to two other claims for the same property).
3. Notification of claimed properties was carried out on 26 September 2007 and 22 June 2010. It was found that cadastral parcel no. 814 is an uncultivated land and at the moment of visits nobody appeared.
 4. On 12 April 2012, Q. H. appeared at KPA and declared that he had purchased the property in 1995 through an informal contract from R. J., known as D., at the price of 3.500 DM and that this transaction was performed in the presence of witnesses D.L. (witness of seller and E. I. and B.G. (witnesses of buyer).
 5. Verification report dated 24 April 2014 shows that possession list was found and the ownership certificate does not contain the name of claimant's father as co-owner.
 6. By decision KPCC/D/A/119/2011 dated 7 September 2011, the Kosovo Property Claims Commission (hereinafter: KPCC) had received the claim and had ordered return of possession to the claimant in the name of his deceased grandfather. By its resolution KPCC/RES/17/2010, the Commission quashed the decision and returned the matter for reconsideration because of wrongful processing by the Secretariat.
 7. By its decision KPCC/D/A/244/2014 dated 18 June 2014, the Commission had rejected the claim because of lack of jurisdiction of KPCC. In its reasoning, in paragraphs 24 and 25 KPCC stated that the claimant did not lose possession over the claimed properties as a result of conflict in 1998-1999, but as a result of sale in 1995.
 8. The appellant had received the Commission's decision on 1 October 2014 and had filed the appeal on 29 October 2014. The appellee Q. H. had received the appeal on 11 June 2015 and he did not file a response to appeal within 30 days.

Allegations of parties

Appellant

9. Appellant alleges that KPCC decision contains fundamental errors and serious violations of substantive law and that the decision rests on erroneous and incomplete determination of facts.

10. Appellant states it is unclear to him whether his claim was rejected according to reasoning in paragraph 24 or 25 of the challenged Decision. The sale of 1995 is informal and unlawful because the appellee also states that they do not have a written contract and that seller was a co-owner and had no right to sell the property in entirety without permission of other co-owners.
11. In the end, appellant requests from the KPA Appeals Panel of the Supreme Court of Kosovo that for this and other reasons to annul the KPCC Decision and return the case to Commission, or to amend the decision and recognize his right to possess the claimed property which was taken unlawfully through informal sale by one of the co-owners.

Appellee

12. Appellee declares that he purchased the claimed property in 1995 from R. Je. –D. and that he has used it without obstacles since then. He had proposed examining witnesses who were presented during the sale and purchase.

Admissibility of the appeal

13. The appeal is admissible because it was filed within 30 day period as foreseen by Section 12.1 of UNMIK Regulation 2006/50 as amended by Law no. 03/L-079 and was considered pursuant to Article 194 of the Law no. 03/L-006 on Contested Procedure (Official Gazette of the Republic of Kosovo no.38/2008) (hereinafter: LCP). The court, pertaining to the examination of judgment ex officio and for mentioned reasons, found that **the appeal is ungrounded.**

Legal reasoning- Jurisdiction

14. According Article 3.1 of the Law no. 03/L-079, KPCC has jurisdiction to resolve conflict-related claims, including circumstances that directly are related to or result from the armed conflict that occurred in Kosovo in the period between 27 February 1998 and 20 June 1999. Therefore, the claimant must prove not only his property right over the private immovable property but also that he or she is currently unable to exercise such property rights because of circumstances that are directly related to or result from the armed conflict.
15. KPCC decided that this matter does not fall under its jurisdiction because loss of possession is not related to circumstances of conflict but as a result of voluntary sale before the conflict.
16. The Supreme Court also ascertains that the property right and possession over the claimed properties were not lost because of the armed conflict in Kosovo in 1998-1999. This ascertainment is based on the fact that appellant brought the Inheritance Ruling of the parallel Court and in the telephone conversations with Agency officials he promised that he

would bring an Inheritance Ruling of the regular Court. In the meantime, Agency ex officio found that according to the inheritance decision Ov.Br. 38/2010 dated 11 May 2010, his grandfather's inheritance was examined and his father was not inheritor of the property. For this, the Agency also certified the Ownership Certificate.

17. The Supreme Court considers that the aforementioned facts lead to conclusion that loss of possession over the claimed properties does not derive from armed conflict that occurred in Kosovo during 1998-1999. The appellant's allegation regarding the validity of alienation of claimed properties and lawfulness of inheritance proceedings, whereby according to appellant his father was unjustly excluded, cannot be evaluated in these proceedings by the KPA Appeals Panel of the Supreme Court because of lack of jurisdiction.
18. The challenged KPCC decision was issued through complete and correct determination of the factual situation as well as proper application of the substantial and procedural law.
19. Therefore, the Supreme Court finds that KPCCC rendered a correct decision when it rejected the claim because it fell outside its jurisdiction. Hence, the appeal is to be rejected as ungrounded.
20. This judgment does not prejudice any property rights of the parties and neither does it present any obstacles to initiate proceedings before competent bodies or competent court.
21. Based on the above and pursuant to Article 13.3 (a) of the Law 03/L-079, it has been decided as in the enacting clause of this Judgment.

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 legal remedies.

Beshir Islami, Presiding Judge

Shukri Sylejmani, Judge

Krassimir Mazgalov, EULEX Judge

Bjorn Olof Brautigam, EULEX Registrar