

SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA

KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË AKP-ës
ŽALBENO VEĆE KAI

GSK-KPA-A-099/2015

Prishtinë/Priština,
27 September 2017

In the proceedings of:

M. J.

Appellant

vs

None

Appellee

The 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 the Kosovo Property Claims Commission, no. KPCC/D/A/228/2014 (case file registered at the KPA under number KPA32263) dated 13 March 2014, after deliberation held on 27 September 2017, issues the following:

JUDGMENT

1. The appeal filed by M. J. against the Decision of the Kosovo Property Claims Commission no. KPCC/D/A/228/2014, dated 13 March 2014, is rejected as ungrounded.
2. The Decision of the Kosovo Property Claims Commission no. KPCC/D/A/228/2014, dated 13 March 2014, as far as it concerns the case KPA32263, is confirmed.

Procedural and factual background:

1. On 28 March 2007, M. J. (hereinafter: Appellant), filed a claim with the Kosovo Property Agency (KPA), seeking re-possession of agricultural land without specified number of parcel, with the surface of 0.55.02 ha, at the place called Livadicë/Livadice, cadastral municipality of Livadicë/Livadica - Podujevë/Podujevo (hereinafter: claimed property). The claim is registered with PAK under number KPA32263.
2. The Appellant alleges that he acquired the property based on informal contract with M.T., in 1971, but he did not register it at the cadastre.
3. To support his claim, the Appellant submitted the following documents:
 - Informal contract concluded between the appellant and M. T., on 15 May 1971 wherewith is mentioned the sale of land of 00.00.55 ha in Livadicë/Livadica, without specifying the cadastral parcel for the certain price;
 - Handwritten evidence on payment of price in the presence of witnesses, undated;
 - Handwritten sketch of location of the claimed property;
 - Identification card of appellant issued on 24 April 2005 by the parallel authorities of Serbia.
4. On 25 April 2013, the KPA notified the claim through publication at KPA Notification Gazette No.11 and at the UNHCR Property Office. Both publications were put at the entrance door of the Municipality of Podujevë/Podujevo. No respondent party has addressed the KPA Executive Secretariat within a deadline of 30 days as prescribed by Section 10.2 of UNMIK Regulation No. 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. The Agency's Secretariat sought the assistance of Cadastral Agency for the identification of property, but based on the data presented by the claimant, the property could not be identified.

5. Based on the summary verification report dated 11 March 2013, the PAK ascertained that the attached documents in the support of claim were not found and the verification was negative because the contract was informal, whereas no property registered under the name of M. T. could be found, for which the appellant alleges to have been previous owner.
6. On 21 August 2013, the Kosovo Property Claims Commission (hereinafter: KPCC) with its confirmed decision, KPCC/D/A/212/2013, rejected the claim. In the reasoning of decision (paragraph 54), the KPCC concluded that based on submitted documents by the party and based on the researches performed ex officio no proves could be found to confirm the ownership right of the appellant, and consequently the claim was rejected.
7. On 31 October 2014, the KPCC decision was served on the appellant. The appellant filed an appeal against the KPCC's decision on 21 November 2014.

Allegations of appellant:

8. The appellant alleges that the KPCC's decision is unlawful and incorrect because it contains serious violation of process, misapplication of substantive law, and that his claim for re-possession has not been fully established. The appellant proposes to the Supreme Court to approve his appeal and to render a judgment wherewith shall recognize the appellant with the right of use of claimed property. The appellant alleges to have submitted sufficient evidence showing that the claimed property was subject of informal transactions by D.B. and then to M. F, and later on it was purchased by M. T. from M. He alleges that I.F., successor of M.F, currently lives in the village of Surkish, in Podujevë/Podujevo, and he will confirm his allegations on transaction. The appellant does not deny the fact that he has not registered it at the cadastre.

Legal Reasoning:

9. After the review of casefile submissions and the appellant's allegations, pursuant to Section 12 and 13 of UNMIK Regulation No. 2006/50, as amended by Law No. 03/L-079, and Article 194 of the Law No. 03/L-006 on the Contested Procedure, the Court found that the appeal is admissible. It was filed within timeline of 30 days as prescribed by Section 12.1 of UNMIK Regulation No. 2006/50, as amended by Law No. 03/L-079.
10. According to Section 3.1 of UNMIK Regulation No. 2006/50 as amended by Law No. 03/L-079, the appellant is entitled to an order from the Commission for repossession of the property if he or she not only proves ownership of a private immovable property, but also that he or she is not now able to exercise such property rights due to the circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.
11. The appellant grounds his ownership right on the documents, which were not found at the respective services in Kosovo. The cadastral data indicate that the claimed property is registered under other parties and is not registered in the name of seller as alleged by the appellant. The appellant does not deny the fact that he has not formalized this transaction at the cadastre, but he states that the local residents can assert the informal transaction. He did not submit evidence to prove the possession of property before or after the conflict.
12. Thus, the Supreme Court considers that it could not be proven that the claimed property was under the ownership of appellant at the verge of conflict, and there is no evidence that it was under the possession of appellant and was lost due to the conflict. Consequently, the ascertainment of the KPCC is correct that the property could not be subject of an order to acquire the ownership right over the property and its re-possession, because the appellant did not prove that the property belonged to him and that he used it before or during the conflict or that he lost it due to the conflict.
13. The Supreme Court considers as correct the ascertainment of the KPCC that the appellant failed to show his ownership right and its loss immediately before or during the conflict of 1998-1999 and therefore the claim was rejected.
14. Finally, the Supreme Court of Kosovo concluded that the appealed decision of KPCC was issued under the complete and correct determination of factual situation and under this ground the material and procedural law was correctly applied. Therefore, the appeal is rejected as ungrounded.

15. This decision does not prejudice any ownership right of the current user and is not an impediment of accomplishment of any right before the regular courts.
16. From the foregoing and pursuant to Article 13.3 under (c) of UNMIK Regulation No. 2006/50 as amended by Law no. 03/L-079, is decided as in the enacting clause of this judgment.

Legal Advice:

Pursuant to Section 13.6 of UNMIK Regulation No. 2006/50, as amended by Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Beshir Islami, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Shukri Sylejmani, Judge

Bjorn Olof Brautigam, EULEX Registrar