

SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA

KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I AELIT TË AGJENICISË KOSOVARE TË PRONËS-AKP-së
ŽALBENO VEÇE KOSOVSKE AGENCIJA ZA IMOVINU-KAI

GSK-KPA-A-164/15

Prishtinë/Priština,

8 November 2017

In the proceedings of:

P. M.

Appellant

vs.

E.A.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Beshir Islami, Presiding Judge, Krassimir Mazgalov and Erdogan Haxhibeqiri, Judges, deciding on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/244/2014 (case file registered in KPA under KPA34592), dated 18 June 2014, after deliberation held on 8 November 2017, issues this

JUDGMENT

1. **The appeal of P. M, filed against the Decision of KPCC/D/A/244/2014 (case file registered with KPA under KPA34592), dated 18 June 2014, is rejected as ungrounded.**
2. **The Decision of Kosovo Claims Commission KPCC/D/A/244/2014 dated 18 June 2014, pertaining to KPA34592 is annulled.**
3. **The Claim No. KPA34592 of P. M. filed with the KPA is dismissed due to the lack of jurisdiction.**

Procedural and factual background:

1. On 28 November 2007, P. M. (hereinafter: the appellant) filed a claim with Kosovo Property Agency (hereinafter: KPA) on behalf of his deceased father R. M. seeking co-ownership to 1/5 and repossession of cadastral parcel no.1028, an arable field with a surface of 0.5.80 ha, at the place called "Selo Dvor", cadastral municipality of Pozharan/Požeranje, Viti/Vitina Municipality (hereinafter: claimed properties). He claims that his father acquired the property through inheritance from his grandfather and that he lost the property in June of 1999.
2. Together with the claim, the claimant submitted in KPA the following documents:
 - Description of possession list no.187 issued by the Geodesy Authority in Viti, on 31 May 1994, in which the claimed properties are listed in the name of claimant's grandfather D.M.
 - Inheritance ruling O.Br.23/93 by which appellant's father inherited 1/5 of the entire immovable property after the death of his grandfather D.
 - Identification card issued by parallel bodies of Gjilan/Gnjilane Municipality on 6 April 2005.
3. Notification of claimed properties was done on 19 June and 13 May 2014. It was found that cadastral parcel no.1028 was occupied by E. A. who alleged a property right over this property based on purchase of property by his father in 1993.
4. Verification report dated 22 May 2014 shows that possession list was found in the name of appellant's grandfather.
5. By the decision KPCC/D/A/244/2014 dated 18 June 2014, the Kosovo Property Claims Commission (hereinafter: KPCC) rejected the claim. In its reasoning, on paragraphs 80 and 81, KPCC stated that claimant did not lose possession of claimed properties because of 1998-1999 conflict, but as a result of sale in 1993.

Allegations of parties:

Appellant:

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

7. Appellant stated that his father and 4 co-owners concluded an informal contract and sold the property in cadastral parcels 1027 and 1028 at the price of 45.000.00 DM (Deutsche Mark) for the surface area of 10 ar. He further claims that these two parcels together have a surface area of 12 ar and that the appellee has no legal rights also to keep the other part of 2 ar, which was more than the contracted part.
8. In the end, appellant requests from the KPA Appeals Panel of the Supreme Court of Kosovo to amend the KPCC Decision, recognize the ownership of his father and co-owners and return him to possession.

Appellee:

9. The appellee stated that his deceased father purchased the claimed property in 1993 for which he has as evidence the informal contract unspecified for which parcels, but for 10 ar of courtyard which is confirmed by the appellant as well.

Admissibility of the appeal:

10. The appeal is admissible because it was filed within the 30-day period as foreseen by Section 12.1 of UNMIK Regulation 2006/50 as amended by the Law no. 03/L-079 on Resolution of Claims related to immovable private property, including commercial and agricultural property.
11. The appeal was examined pursuant to Article 194 of the Law no. 03/L-006 on Contested Procedure (Official Gazette of the Republic of Kosovo Ni.38/2008) (hereinafter: LCP), the Court in relation to examination of the judgment ex officio and for reasons mentioned and not mentioned in the appeal found that *the appeal is ungrounded.*

Legal reasoning:

Jurisdiction:

12. According to Article 3.1 of the Law no. 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. Therefore, the claimant must not only prove his property right over the private immovable property, but also that he or she is now not able to exercise such property rights by reason of circumstances directly related to or resulting from the armed conflict.
13. KPCC decided that this matter falls outside its jurisdiction because the loss of possession is not related to the armed conflict, but as a result of voluntary sale of claimed properties before the conflict, without examining the incongruity concerning the land surface. Nevertheless, this makes neither the claim nor the appeal admissible because this does not fall within jurisdiction of KPCC
14. Thus, the Supreme Court ascertains that the property right and possession over the claimed properties were not lost because of armed conflict in Kosovo in 1998-1999. This conclusion is based on the appellant's confirmation, who admits the fact that the property was sold but insists that the entire surface area was not included.

15. The Supreme Court considers that the aforementioned facts lead to the conclusion that the loss of possession over the claimed properties did not result from the armed conflict that occurred in 1998-1999. The appellant's allegation regarding the validity of alienation of claimed properties cannot be evaluated in these proceedings by the KPA Appeals Panel of the Supreme Court because of lack of jurisdiction.
16. The challenged KPCC Decision was taken through complete and correct determination of the factual situation properly.
17. The Supreme Court finds that the KPCC should have dismissed the Claim instead of rejecting (refusing) because it falls outside its jurisdiction. Consequently, the Appeal should be rejected as unfounded, but the KPCC decision be annulled and the claim be dismissed ex officio.
18. This judgment does not prejudice any property rights for the parties nor does it present an obstacle to initiate proceedings before the competent body or competent court.
19. Based on the above and pursuant to Article 13.3 (c) 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 remedies.

Beshir Islami, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Erdogan Haxhibeqiri, Judge

Bjorn Olof Brautigam, Acting EULEX Registrar