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-219/2015

Prishtinë/Priština,
13 December 2017

In the proceedings of:

V J
Street "B I JNr.30"
11253 S -B
S

Appellant

vs.

SOE "A" (in Liquidation)

Represented by

P A of K
Str. R M Nr. 2
P/P

Represented by
M S (Legal Officer)

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Beshir Islami, Presiding Judge, Krassimir Mazgalov and Isa Kelmendi, Judges, deciding on the appeals against the Decision of the Kosovo Property Claims Commission KPCC/D/A/267/2015 dated 30 March 2015 (case file registered at the KPA under number KPA13242), after deliberation held on 13 December 2017, issues the following

JUDGMENT

1. **The appeals of V J against the Decision of the Kosovo Property Claims Commission KPCC/D/A/267/2015 regarding case file registered at the KPA under the number KPA13242 is rejected as unfounded.**
2. **The Decision of the KPCC/D/A/267/2015 regarding case file registered at the KPA under the number KPA13242 is confirmed.**

Procedural and factual background

1. On 10 October 2006, V J (hereinafter: the Appellant) filed four a Claim with the Kosovo Property Agency (hereinafter: the KPA) seeking repossession over the cadastral parcel no 9551298/6, cultivated land with the surface of 1.60.00 ha, located at village "Gušica/Gushicë, Municipality of Vitia/Vitina, (hereinafter: the claimed property). He declared that his family gained the claimed properties through the Judgment for denationalization. The loss of possession was as the result of the circumstances of 1998/1999 in Kosovo.
2. To support his claims, the Appellant provided the KPA with the following documents:
    - Judgment No 155/90 issued by Municipal Court of Vitia/Vitna on 5 December 1994, through which it was confirmed that the Claimants, V and L J are the owners of cadastral parcel no 955, located at the place called "Beli Luk" with the surface 03.67.83 ha and cadastral parcel no 1298/6 located at the place called "Beli Luk" with the surface of 01.15.62 ha. Both cadastral parcel are listed on Possession List No 147 on the name of Agricultural Cooperative Vitia/Vitina, thus, the Enterprise "Agro Morava" in a capacity of the Respondent was obliged to recognize the ownership right over the above mentioned properties to the Claimants, to handover the possession of the above mentioned properties to the Claimants as well as to allow the Claimants performing the cadastral changes,
    - Copy of Plan No 147 issued by Department for Cadastre of Municiplaity of Vitia/Vitina on 1995, listing the claimed property as Socially Owned Property "Z Z/A C" Vitia/Vitina,
    - The request filed before Cadastral Agency of Kosovo by L and V J for the implementation of the changes before the Cadastre,
    - Death Certificate No 203-42/04-35 issued on 27 February 2004 by Civil Registration Office of Kragujeva, showing L J passed away on 22 February 2004,

- Professional Opinion issued by Kosovo Cadastral Agency on 10 January 2005 related to the request of V and L J for registering the property right on their own names. Kosovo Cadastral Agency confirms that after relieving the submitted documentation and within the legal deadline with decides about the request,
- Decision No 245/2007 issued by Municipal Court of Vitia/Vitina on 11 January 2008 through which the Court allows the performance of the cadastral changes on the name of V and L J. The legal basis for the changes was the Judgement No 155/90 .The Directorate for Cadastre was obliged to implement the changes immediately after the Decision became (25 February 2008),
- Cadastral Decision No 489 issued by Kosovo Cadastral Agency on 13 November 2008. According to the Decision, the conditions for the registration of the property rights on the name of V and L J were fulfilled, however, the request for performing the cadastral changes was rejected due to the Decision of the Municipal Assembly of Vitia/Vitina No 013/838 dated on 6 March 2008 that temporary delays registration of the immovable properties on the cadastre for the ownership rights that derives from the former socially owned enterprises,
- Cadastral Decision No 03/715/69 issued by Kosovo Cadastral Agency on 02 May 2009 through which the appeal of V and L J against the Cadastral Decision No 489 was rejected as ungrounded,
- The Lawsuit No 478/09 filed before Supreme Court of Kosovo by V and L, both in a capacity of the Claimants on 25 June 2009 for annulment of the Cadastral Decision No 03/715/69 through which it was rejected the Claimants appeal as ungrounded

3. The Notification of the Claim occurred on 1 Jun 2010 by publishing the claim in the KPA Notification Gazette No 2 dated 17 June 2010 and the UNHCR Property Office Bulletin. The Gazette and the list were left with the Municipality of Vitia/Vitina, at the entrance and exit of the village Gušica/Gushicë. The same publications were left at the Cadastral Office of Vitia/Vitina, Municipal Court of Vitia/Vitina and Prishtinë/Priština Regional Office of the KPA.
4. On 29 September 2014, Kosovo Privatization Agency (hereinafter: the Appellee) through M S (Legal Officer) approached the KPA by showing the legal interest to the Claim.

   In support of the Claim the Appellee submitted the following evidences:

   - The Information Letter of Privatization Agency of Kosovo referred to the Kosovo Property Agency on 29 September 2014 informing the Kosovo Property Agency that the Enterprise "A" (under the Liquidation process) is under the administration of Kosovo Privatization Agency. The Enterprise "A" underwent the liquidation process on 7 July 2014 pursuant to the Law No 04/6-034. The claimed properties are registered on the name of Enterprise "A". V J was informed regarding the Liquidation process on 16 July 2014 but he did not file any claim related to the claimed properties,

- Possession List No 147 issued by Municipality of Vitia/Vitina, Department for Cadastre Geodesy and Property on 15 May 2007, listing the claimed properties as Socially Owned Properties on the name of the Enterprise "A"
- The Information Letter of the Kosovo Privatization Agency No 16295/2014 dated 16 July 2014 informing V J for the liquidation process of the claimed properties.
- Certificate for Immovable Right Property No 4013/2014 issued by Municipal Cadastral Office of Vitia/Vitina on 24 September 2014 listing the claimed properties on the name of Enterprise "A",

5. On 30 March 2015, the Kosovo Property Claims Commission dismissed the claim through its Decision KPCC/D/A/267/2015. In paragraphs 18, 19 and 20 of the Cover Decision, which according to the Certified Decision applies specifically to the claims at hand, it is said that according to an authorized representative of the Kosovo Privatization Agency the claimed properties in 2002 has been placed under the administration of Kosovo Trust Agency (and subsequently its successor the Privatization Agency of Kosovo) on this basis of the adoption of UNMIK Regulation 2002/12 as amended by UNMIK Regulation 2005/18. According to the representative, the Enterprise "A" is under liquidation process and therefore the claimed property falls exclusively under the jurisdiction of the Special Chamber of the Supreme Court of Kosovo under section 4.1 (c) and section 5.1 (a) of the Special Chamber of UNMIK Regulation 2008/4. In these circumstances, the Commission finds that the alleged property right holder did not lose the ability to exercise his right as a result of the 1998-1999 conflict, but instead as result of the subsequent privatization process, consequently, the Claims falls outside the Commissions jurisdiction. The Commission notes that the Decision does not prejudice the right of the claimant to seek relief before a Court of competent jurisdiction.
6. The Decision was served on Appellant on 4 June 2015. He filed an appeal on 25 June 2015.

Allegations of the appellant

7. The Appellant states that the KPCC Decision contains essential violations and wrongful application of the material and procedural law as well as erroneous determination of the facts.
8. The Appellant alleges that it is not true that his family did not loss the possession over the claimed property because of the conflict.
9. The Appellant alleges that his family acquired the property rights over the claimed property on 1994 pursuant to the Judgment No 155/90.
10. According to the Appellant, the fact the he is not registered at the cadastral books as the owner of the claimed property cannot be the reason to dismiss his claim

11. Based on the above, the Appellant seeks the Supreme Court to annul the KPCC Decision and to confirm the repossession right in his name.

Legal reasoning

Admissibility of the appeal

12. The appeal was filed within 30 days as foreseen by Article 12.1 of the Law No 03/L-079 and is admissible.

Merits of the appeal

13. The Supreme Court reviewed the appealed Decision pursuant to provisions of Article 194 of Law on Contested Procedure No 03/L-006 (henceforth: LCP) and after evaluating the allegations of the Appellant it found that the appeal is unfounded.
14. The Supreme Court finds that the KPCC has rendered a correct Decision when dismissed the claim due to its Jurisdiction.
15. Pursuant to Section 3.1 of the Law No 03/L-079, a Claimant is entitled to an order from the Commission for repossession of the property if the Claimant not only proves ownership of a private immovable property or use rights of the private immovable property, but also that he or she is not now able to exercise such property rights by reason of circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.
16. At first, the Appellant alleges that his family gained the ownership right over the claimed property based on the Judgment No 155/90 issued by Municipal Court of Vitia/Vitina.
17. Pursuant to Article 20 of the Law on Basic Property Relations (Official Gazette No 6/80), applicable at the time when the Judgment No 723/90 was issued (on 1993), the right of property can be acquired by law itself, based on legal affair (legal transfer) or inheritance.
18. However, Article 33 of the Law on Basic Property Relations (OG SFRY, No 6/80), stipulates that on the basis of the legal affair the property right over the real estate shall be acquired by registration into the "public notary book" (cadastral book) or in some other appropriate way that is prescribed by law.
19. The Executive Secretariat of the KPA has found *ex officio* the Certificates for Immovable Property Rights that reflects the claimed property registered under the name of the Enterprise "A".

20. This lead to the conclusion that the Appellant's family has not gained the property right since the conditions of Article 33 of the Law on Basic Property Relations (SFRY, No 6/80) were not fulfilled.
21. The claimed property were and it is still registered under the name the Enterprise "A", which means that it was and it is a socially-owned property. Pursuant to Article 321, paragraph 1 of the LCP there is no need to prove neither the facts that are widely known nor the facts that have been proved in previous court verdicts.
22. Confirmation and protection of the property rights over socially-owned properties and/or state-owned properties is not in the jurisdiction of KPCC, respectively the KPA Appeals Panel.
23. The Supreme Court finds that no violation of the substantial law or incompletely establishment of the facts has been made.
24. This Judgment remains without prejudice to the right of the Appellant to pursue his claims before the competent court, if he considers it necessary.
25. In the light of foregoing, pursuant to Section 13.3 under (c) of the Law 03/L-079, it was decided as in the enacting clause of this judgment.

Legal Advice

Pursuant to Section 13.6 of the Law 03/L-079, this Judgment is final and cannot be challenged through ordinary or extraordinary remedies.

Beshir Islami, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Isa Kelmendi, Judge

Bjorn Olof Brautigam, Acting EULEX Registrar