

**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-184/15

**Prishtinë/Priština,
28 March 2018**

In the proceedings of:

**M S
3, K
S**

Appellant

Vs

N K

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Krassimir Mazgalov and Ragip Namani, Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/A/244/2014 (case file registered at the KPA under No. KPA40421) of 18 June 2014, after deliberation held on 28 March 2018, issues the following:

JUDGMENT

1. The appeal of M S against the Decision of the Kosovo Property Claims Commission KPCC/D/A/244/2014, dated 18 June 2014, with regard to the claim registered with KPA under No. KPA40421 is rejected as ungrounded.
2. The Decision of the Kosovo Property Claims Commission KPCC/D/A/244/2014, dated 18 June 2014, with regard to the claim registered with KPA under No. KPA 40421 is confirmed.

Procedural and factual background:

1. On 17 August 2007, M S (hereinafter: the Appellant) filed a claim with the Kosovo Property Agency (KPA), seeking for re-possession of the cadastral parcel number 132 with the culture, cultivated land of the 5th class with the surface of 00.51.63 ha, located at place called Stepenice –Kijevë/Kijevo, Municipality of Klinë/Klina (hereinafter: the claimed property).The Appellant alleged that he has bought the claimed property from Đ S on 1994.
2. The Appellant stated that the possession over the claimed property was lost on 28 June 1999 due to the armed conflict in 1998/1999 and it is usurped by I K. In addition to the re-possession, the Appellant seeks to be compensating for the time being unable to use his property.
3. Supporting his claim the Appellant submitted the following evidences:
 - The copy of Possession List No 13/87 issued by Municipal Geodesy Directorate of Peja/Peć on 9 February 1988 listing the claimed property on the name of C S,
 - The copy of Purchase Contract concluded on 25 October 1994 between Đ, V and L S in the capacity of the sellers of the claimed property and M S as the buyer. The Contract was not certified before the Court,

- The copy of the Cadastral Ruling No 224-07 issued by Kosovo Cadastral Agency on 11 June 2007, whereby, the Kosovo Cadastral Agency approved the request of the Đ S to transfer on his name the properties which were the subject of the Inheritance Ruling T.Nr.21/2007 (not related to the claimed property). The request was filed by J P based on the Power of Attorney leg.nr.1660/2007 dated on 11 July 2007,
 - The copy of Certificate for the Immovable Property Right No 00026 issued by Municipal Cadastral Office of Peja/Peć on 7 December 2007. The properties (not related to the claimed property) listed on the Certificate were registered on the name of Đ S,
 - The copy of Written Statement certified before Municipal Court of Kragujevac under the number Ov.Br. 6307/2007, whereby Đ, V and L S in the capacity of the witnesses testifies that their family sold the claimed property to M S on 1994,
 - The copy of Power of Attorney dated on 24 June 2009 whereby Đ S authorizes M S to represent him before the KPA proceedings as well as to take all legal actions needed before the competent institutions as much as it relates the claimed property. The Power of Attorney was legalized before Municipal Court of Kraljevo under the number 8434/09,
4. The claimed property was notified on 19 May 2010 and it was found to be not occupied.
 5. On 11 February 2014, N K (hereinafter: the Appellee) approached KPA by alleging that his brother, I K has bought the claimed property from A K.
 6. In order to support his claim, the Appellee presented the evidences as below:
 - The copy of Written Statement dated on 28 November 2002 whereby C S declared that he has sold the claimed property to I K on 28 November 2002 by receiving 35 000 euro as a purchase price. The Statement was certified before Municipal Court of Kragujevac under the number 6913/02,
 - The copy of Power of Attorney dated on 28 November 2002 whereby C S authorizes R R R to take all the legal actions needed related to the claimed

property. The Power of Attorney was legalized before Municipal Court of Kragujevac under the number 6912/02,

- The copy of Confirmation No 06/644 issued by Municipal Assembly of Malishevë/Mališevo on 23 December 2002 through which the Municipality declared that C S is the owner of the claimed property and that the Municipality shows no legal interest to buy the same,
 - The copy of Purchase Contract conducted on 28 November 2002 between Real Estate Agency “Kontakti” from Peja/Peć (represented by A K) in capacity of the seller and I K as the buyer of the claimed property,
 - The copy of Purchase Contract conducted on 2 December 2002 between C S (represented by R Rexhepi based on Power of Attorney No 6912/02) in the capacity of the seller of the claimed property and I K as the buyer. The Purchase Contract was certified before Municipal Court of Malishevë/Mališevo on 4 March 2003 and it took the number Vr.Nr.363/2003,
 - The copy of Certificate for Immovable Property Right No 00304 issued by Cadastral Municipality Malishevë/Mališevo on 2 February 2010 listing the claimed property on the name of I K,
7. The Executive Secretariat of KPA verified positively the Statement No Ov.Br. 6307/2007 and Power of Attorney No 8434/09 dated on 24 June 2009. Further, based on the verification reports of the Executive Secretariat of KPA, both, the Written Statement dated on 28 November 2002 under the number 6913/02 and Power of Attorney No 6912/02 dated on 28 November 2002 was negatively verified. According to the officials of the respective institutions in Serbia the documents were forged. However, the Purchase Contract Vr.Nr.363/2003 conducted on 2 December 2002 between C S in the capacity of the seller of the claimed property and I K as the buyer was verified positively. Moreover, the Certificate for Immovable Property Right No 00304 issued by Cadastral Municipality Malishevë/Mališevo on 2 February 2010 that reflects the claimed property on the name of I K was positively verified.
8. The KPCC dismissed the claim due to lack of jurisdiction maintaining that the inability to exercise the possession of the claimed land does not derive from

circumstances directly related to or resulting from the armed conflict. The KPCC noted that the Appellee contended that he bought the claimed property in 2003 and submitted a purchase contract concluded dated 4 March 2003. The cadastral records were updated in the name of the Appellee. KPCC decided that the Appellant failed to provide evidence in support of his allegations and concluded that the matter is not within its jurisdiction.

9. The Decision was served to the Appellant on 16 October 2014. The Appeal was filed on 7 November 2014.

The allegations of the Appellant

10. The Appellant challenged the Decision of the KPCC stating that it contains fundamental errors and serious violation of the substantive law and that it rests on erroneous and incomplete determination of facts.
11. The Appellant alleged that he did not sell the property to anyone in 2003. In his appeal, he reiterated his allegations on the forgery of the purchase contract and Power of Attorney.

Legal Reasoning

12. The appeal is admissible. It was filed within 30 days as foreseen by Section 12.1 of the UNMIK Regulation No 2006/50 as amended by Law No. 03/L-079.
13. The Supreme Court, after the review and assessment of the submissions from the case file, the appealed Decision and the allegations of the Appellant, found that the appeal is ungrounded.
14. In the case at hand, the Appellee claimed that he bought the claimed property from C S in 2003 which was denied by the Appellant with the allegation of falsification of the documents and forgery. The Supreme Court is to find out whether KPCC had jurisdiction under these conditions.

15. According to Section 3.1 of UNMIK Regulation 2006/50 as amended by 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 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.
16. It is not contested between the parties that family S was the property right holder till 2003. The Appellee claims that he bought the claimed property in 2003. The sale of the property allegedly took place on March 2003 meaning quite some time after the conflict.
17. As the Appellant says, the possession of claimed property by the Appellee derives from signature of a falsified Purchase Contract. The Appellant did not present any evidence to this end nor initiated a complaint with the prosecution office for his allegations in this regard. The Purchase Contract through which the transaction of the claimed property was transferred was positively verified before the competent Court. Nevertheless, whether the contract is legally valid and whether the Power of Attorney if falsified is not relevant in these proceedings. The allegation on forgery cannot be examined by KPCC or the Supreme Court herein. The alleged contract, regardless of whether it is forged one or not, bearing the date of 4 March 2003 indicates that the dispute at hand between parties is not directly related to or resulting from the armed conflict that occurred in Kosovo in 1998/99. This is the relevant fact to take into account now as to the jurisdiction of the KPCC. The contested matter between the parties whether the contract of 2003 is forged or signed under pressure does not fall within the jurisdiction of the KPCC since it has no direct link with the armed conflict.
18. The Supreme Court considers that the decision of KPCC was correct as to dismissing the claim within the limits of jurisdiction and competence of KPCC pursuant to Article 11.4.c of the UNMIK Regulation No 2006/50, as amended by Law No 03/L-079 and is to be upheld.
19. Based on the aforementioned and in pursuant to Section 13.3.b. of the UNMIK Regulation No 2006/50, as amended by law No 03/L-079 and Article 166, paragraph

2, of the Law on Contested Procedure, it is decided as in the enacting clause of this judgment.

Legal Advice

Pursuant to Section 13.6 of UNMIK Regulation 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

Ragip Namani, Judge

Timo Eljas Torkko, EULEX Registrar