

**SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA**

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

GSK-KPA-A-212/15

**Pristina,
10 May 2018**

In the proceedings of:

D. B.

Appellant

vs.

B. P.

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 no. KPCC/D/R/255/2014 (case file registered at the KPA under the number KPA24374), dated 27 August 2014, after the deliberation held on 10 May 2018, issues the following

JUDGMENT

1. The appeal of D. B. filed against the Decision of the Kosovo Property Claims Commission KPCC/D/R/255/2014; dated 27 August 2014 is rejected as ungrounded.
2. The Decision of the Kosovo Property Claims Commission KPCC/D/R/255/2014, dated 27 August 2014, as far as it concerns the claim registered at the KPA under the number KPA24374 is confirmed.

Procedural and factual background:

1. On 13 February 2007, D. B., (hereinafter: the Appellant) filed a Claim at the Kosovo Property Agency (KPA) on behalf of his deceased father (R. B.), seeking the ownership right and re-possession over the cadastral parcel no 5396/28.
2. The Appellant declared that his deceased father is co-owner of the cadastral parcel no 5396/28 at which it was located an old house with the surface of 52 m² and the new house with the surface of 128 m² with the total surface of 00.03.00 ha (hereinafter: the claimed property). The Appellant alleges that the claimed property is occupied. In addition to the repossession, he requested to be compensated for using his property without his consent.
3. To support his claim, the Appellant submitted the following documents:
 - Birth Certificate No 200-1-1/986 issued by Civil Registration Office of Peja/Peć on 5 October 1998 showing the relation between Dragan and R. B.,
 - Possession List No 3388 issued by displaced Department of Cadastre and Real Estate of Peja/Peć on 26 April 2006 the claimed property on the name of R. B.,
 - Answer on the Request No 135-174/06 filed on 17 July 2006 by R. B. before the archive of Municipality of Novi Beograd regarding the verification of Power of Attorney. The Department for General Administration of the archive of Municipality of Novi Beograd confirmed that R. B. has not completed the certification of the submitted Power of Attorney,

- Death Certificate No 203-02-2411/2007 issued by Civil Registration Office of Jagodina on 13 February 2007 showing R. B. passed away on 6 March 2005 on Jagodina,
 - Lawsuit filed before Municipal Court of Peja/Peć on 30 March 2007 by R. B. in the capacity of the Claimant against N. Ll. in a capacity of the Respondent. The Claimant seeks the annulment the Contract on Sale,
 - Inheritance Decision No 800/06 issued by Municipal Court of Jagodina, final since 13 September 2007 through which D. B. inherited the claimed property from his father R. B.,
 - Ruling C. Nr. 233/07 issued on 17 September 2009 by Municipal Court of Peja/Peć through which the Court finds that the authorized representative of the Claimant (R. B.), N. H. has withdrawn the Lawsuit due to the death of the Claimant,
4. On 7 March 2014, KPA performed the Notification of the Claim by founding the claimed property occupied by B. P. (hereinafter: the Appellee) who claimed that he has bought the claimed property and reconstructed a new house.
5. To support the allegations, U. P. (son of the Appellee) presented the following documents:
- Power of Attorney legalized before Municipal Court of Čačak on 8 December 2000 under the reference number 2681/2000, through which R. B. authorized N. Ll. to sell cadastral parcel no 5396/2 which is composed from the house of the surface form 52 m² and yard of the surface from 00.02.48 ha. According to the Power of Attorney, N. Ll. may conduct the Contract on Sale, receive the purchase price and finalize the transfer of the property on the name of the buyer,
 - Contract on Sale No 1909/00 conducted between R. B. (represented by N. Ll. based on Power of Attorney No 2681/2000) in a capacity of the seller and S. I. as the buyers of cadastral parcel no 5396/2. The Contract was legalized before Municipal Court of Peja/Peć on 11 December 2000,
 - Contract on Sale No 140/01 conducted on 16 January 2001 between S. I. as the sellers of cadastral parcel no 5396/2 and B. P. in the capacity of the buyer,
 - Transcript of the Possession List No 3388 issued by Displaced Cadaster of Peja/Peć listing cadastral parcel no 5396/29 on the name of R. B. and P. L. as co-owners of 1/2 equal parts

- Certificate for Immovable Property Rights UL-7161071-03388 issued by Municipal Cadastral Office of Pejë/Peç on 28 September 2010 showing the cadastral parcel no 5396-28 on the name of P. L.,
 - Certificate for Immovable Property Rights UL-7161071-07055 issued by Municipal Cadastral Office of Pejë/Peç on 28 September 2010 showing the cadastral parcel no 5396-2 on the name of B. P.1,
 - Witnesses Statement dated on 3 March 2014 through which D. D., B. P.2 and Gj. S. testified that B. P.1 had bought the land with the surface from 00.03.00 ha from P. L. on 1982. At the land it was located one floor house. The purchase price of the land was 52.000 DM (German Currency) and it was paid on 2 (two) instalments,
 - Receipt of the Municipal Court of Pejë/Peç issued on 3 March 2014 showing that B. P.1 had paid the taxes for the Lawsuit C.Nr.175/14.
6. Because at the documents submitted by the parties the properties in some of the documents appears as cadastral parcel no 5396/2 and at other documents as cadastral parcel no 5396/28, the Executive Secretariat of KPA refers to Municipality of Peja/Peç for clarification of the issue related to those two (2) cadastral parcels. Municipality of Peja/Peç responded to the request of the Executive Secretariat of KPA on 18 February 2014 by attaching Chronological History related to the claimed property, with the following explanation:
- On 1956 Cadastral Parcel No 5396/1, meadow with the surface 00.92.15 ha and Cadastral Parcel No 5396/2, cultivated land with the surface 00.94.04 ha were listed at Possession List No 2827 on the name of B. K.
 - On 1960 the Possession List No 2827 was transferred on the name of M. R.1 (the wife of M. R.2) but the Municipality does not possess the document that serves as the legal basis for this transfer.
 - On 1961 according to the decision 356/61, Cadastral Parcel No 5396/2, meadow with the surface 00.06.00 ha was transferred on the name of P. L. and R. B. both per ½ equal parts. This change was registered on the Possession List No 3688.
 - On 1980 pursuant to the Decision 74/80 the cadastral parcel no 5386/2 was divided on Cadastral Parcel no 5396/2 (house with the surface of 52 m² and yard with the surface of 00.24.88 ha and it was registered on the name of R. B. and Cadastral Parcel No 5396/27

- (house with the surface 60 m² and yard with the surface of 00.24.00 ha registered on the name of P. L.,
- On 1991 based on the Request No 01-5/177 dated on 27 October 1980 the Cadastral Parcel No 5396/27 was corrected to the Cadastral Parcel no 5396/28 and yet is registered on the name of P. L.
 - On 2001, the Cadastral Parcel No 5396/2 was transferred on the name of B. P. based on the Contract on Sale No 140/2001 dated on 16 January 2001,
7. The Executive Secretariat of KPA verified positively the following documents:
- Possession List No 3388 issued by displaced Geodetic Republican Institute, Department of Cadaster and Real Estate on 26 April 2006 the claimed property on the name of R. B.,
 - Certificate for Immovable Property Rights UL-7161071-03388 issued by Municipal Cadastral Office of Pejë/Peć on 4 December 2011 showing the cadastral parcel no 5396-28 on the name of P. L.,
 - Inheritance Decision No 800/06 final since 13 September 2007
 - Contract on Sale No 1909/00 conducted on 11 December 2000 between R. B. (represented by N. Ll. based on Power of Attorney No 2681/2000) in a capacity of the seller and S. I. as the buyers,
 - Contract on Sale No 140/01 conducted on 16 January 2001 between S. I. as the seller of cadastral parcel no 5396/2 and B. P. in the capacity of the buyer
8. The Appellant confirmed that initially the claimed property was divided into cadastral parcel no 5396/28 and 5396/2 and after the division to his father belonged cadastral parcel no 5396/2 while regarding the sale transaction he insisted that Power of Attorney No 2681/2000 was forged, hence, the transaction was and it is not valid.
9. On 27 August 2014, the KPCC, with its decision KPCC/D/R/255/2014, dismissed the claim because the Commission finds on the basis of the various verified documents that the Claimant failed to show that his claims involves circumstances directly relegated to the conflict. The Claimants current inability to exercise his property rights is due to the sale transaction of the claimed property validity of which is contested by Claimant on various grounds.
10. The Decision was served to the Appellant on 3 December 2014. On 26 December 2014, the Appellant filed an appeal.
11. The Appellee received the Decision on 17 October 2014.

Appellant's allegations

12. The Appellant declared that the KPCC Decision contains fundamental errors or serious violation of the substantive law, and that the Decision rests on erroneous and incomplete determination of facts.
13. The Appellant declares that the findings of the Commission are not true as he never give a statement that his claim does not involve the circumstances related to the armed conflict occurred on 1988-1999, is the opposite, because of the conflict my family is not able to exercise the property rights.
14. The finding that the ability to exercise the property right is due to the sale transaction absolutely is not true. According to the Appellant he has submitted sufficient evidence before the Executive Secretariat of KPA proving that the sale transactions was never performed because his father never give the Power of Attorney for selling the claimed property and submitted Power of Attorney is falsified.
15. In the end, the Appellant proposed the Court to accept his appeal as grounded and confirm the repossession right of the claimed property in his favour.

Legal reasoning:

Admissibility of the appeal

16. The Appeal is admissible. It was filed within the time limit of 30 days as foreseen by Section 12.1 of the Law no. 03/L-079.
17. Section 3.1 of the Law no. 03/L-079 foresees that 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, 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.

18. The KPCC decided that the matter is not in its jurisdiction since the loss of possession does not derive from the circumstances of the armed conflict but derives from the sale contract in 2000.
19. It is not contested that the Appellant, or his family, initially had lost the possession over the claimed property due to the circumstances resulting from the armed conflict.
20. However, from the pieces of evidence presented before the KPCC, it results that the claimed property, which initially has been registered in the name of R. B., was sold to a third party through a Contract on Sale No 1909/00 dated on 11 December 2000. The Contract No.1909/00 was concluded based on the Power of Attorney No 2681/2000 legalized before Municipal Court of Čačak on 8 December 2000.
21. The Contract is positively verified by the KPA Executive Secretariat.
22. The Appellant objects the sale stating that the Power of Attorney based on which the transaction was conducted was falsified.
23. The Supreme Court notes that the validity of the Power of Attorney and certification of that Contract on Sale cannot be challenged in these proceedings before KPA and the Supreme Court. This is due to the fact that the Contract on Sale No 1909/00 was concluded on year 2000 as well the Power of Attorney No 2681/2000 was legalized before Municipal Court of Čačak on 8 December 2000 and this fact is not directly related or resulting from the circumstances of the armed conflict occurred between 27 February 1998 and 20 June 1999.
24. The Supreme Court finds a Lawsuit initiated on 30 March 2007 by the Appellant before Municipal Court of Peja/Peć. The subject of the Lawsuit was annulment of the Contract on Sale due to forged Power of Attorney based on which the claimed property allegedly was sold. Later on, based on the Ruling C. Nr. 233/07 issued on 17 September 2009, Municipal Court of Peja/Peć finds that the authorized representative of the R. B., N. H. has withdrawn the Lawsuit due to the death of R.
25. Therefore, the Supreme Court concludes that KPCC by dismissing the claim as falling outside its jurisdiction has rendered a correct Decision.
26. As far concerns the composition for use of the claimed property neither the Commission nor the KPA Appeals Panel of the Supreme Court has the mandate to deliver Decisions over claims for compensation. The Law No. 03/L-079 itself does not provide for compensatory mechanism for destroyed property.
27. In the light of the above, pursuant to Article 13.3 item (c) of the Law 03/L-079, it has been decided as in the enacting clause of this Judgment.

28. This Judgment has no prejudice to the Appellant's right to refer her case to the competent Court outside the jurisdiction foreseen by provisions of Section 3.1 of Law no. 03/L-079.

Legal advice:

Pursuant to Article 13.6 of 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

Krassimir Mazgalov, EULEX Judge

Ragip Namani, Judge

Timo Eljas Torkko, EULEX Registrar