

**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-176/14

Priština/Prishtinë

14 December 2016

In the proceedings of

D. V.

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini Presiding Judge, Krassimir Mazgalov and Beshir Islami, Judges, deciding on the Appeals against the Decision of the Kosovo Property Claims Commission KPCC/D/A/220/2013 dated 27 November 2013 (case files registered at the KPA under nos. 19410, 90265 and 90266), after deliberation held on 14 December 2016 issues the following

JUDGMENT

1. The Appeals filed by D. V., registered under the numbers GSK-KPA-A-176/2014, GSK-KPA-A-177/2014 and GSK-KPA-A-224/2015, are joined in a single case under the number GSK-KPA-A-176/2014.
2. The Appeals of D. V. against the Decision of the Kosovo Property Claims Commission KPCC/D/A/220/2013 dated 27 November 2013, with regard to the Claims registered with KPA under Nos. KPA19410, KPA90265 and KPA90266, are rejected as unfounded.
3. The Decision of the Kosovo Property Claims Commission KPCC/D/A/220/2013 dated 27 November 2013, with regard to the Claims registered with KPA under Nos. KPA19410, KPA90265 and KPA90266, is confirmed.

Procedural and factual background

1. On 7 December 2006, D.V.(henceforth: the Appellant) in her capacity of family household member of her husband R.V. filed a Claim with the Kosovo Property Agency (henceforth: the KPA), registered under case no. KPA19410, seeking the ownership right and repossession of the cadastral parcel nos.460/11, 460/2 and 3/7 with a total surface area of 00.08.50 ha, located at the place called "Paunovo Polje", Ferizaj/Uroševac (henceforth: the claimed property). The Appellant stated that the possession over the claimed properties has been lost due to circumstances related to the armed conflict that occurred in Kosovo in 1998/99, indicating 12 June 1999 as a date of loss.
2. Subsequently the original claim has been separated into new claims under the numbers KPA90265 for cadastral parcel no.460/2 and KPA90266 for cadastral parcel no.3/7. After the separation of the claims, the original claim KPA19410 contained only cadastral parcel no.460/11.
3. To support her claim, the Appellant provided the KPA with the following documents:
 - Marriage Certificate No 213 issued by Civil Registration Office of the Municipality of Ferizaj/Uroševac on 3 February 1989 through which it was proven the family relation between the Appellant and her husband.

- Contract on Purchase No 17/01 dated 28 August 1991 and certified on 5 July 2001 by a parallel court of Ferizaj/Uroševac according to which Appellant's husband bought a part of the cadastral parcel no 460/11 with the surface of 00.03.50 ha and cadastral parcel no 460/2, 3/7 with the surface of 00.05.00 ha from Ž.J.
 - Copy of plan no.4263 dated 10 June 2004 and Transcript of the Possession List under the same number but dated 30 November 2010, issued by dislocated cadastre, listing Ž. J. as owner of the cadastral parcel no 460/2 with the culture "meadow" and the surface of 00.27.83 ha.
 - Power of Attorney dated 13 April 2006 certified under the No.192/06 by the Municipal Court in Leposavić by which Ž.J. is authorizing Appellant's husband to sell the claimed properties and to undertake all necessary actions for the sale, including certifying the Purchase Contract before the competent court and making all the changes in the competent Cadastre Agency.
 - Statement by Ž. J. that he sold to Appellant's husband cadastral parcel no 460/9 with the surface 00.05.00 ha and the part from 00.03.50 ha of the cadastral parcel no 460/2 on 28 August 1991 but due to the existence of the Law on prohibition of sale and transfer of ownership in the territory of Kosova the Contract on Purchase was certified and signed on 4 July 2001.
4. The Notification of the Claims was performed on 31 May and 17 June 2010 by publishing the Claims in the Notification Gazette no.1 and no. 2 and in the UNHCR Property Bulletin Office. The Gazette and the List were left to the Municipality of Ferizaj/Uroševac, Basic Court of the Municipality of Ferizaj/Uroševac and Cadaster Office of the Municipality Ferizaj/Uroševac. The correctness of the Notification of Claims was confirmed on 17 June 2010.
 5. Within the legal deadline of 30 days, pursuant to Article 10.2 of the Law no. 03/L-079, no party has expressed an interest to take part in proceedings with regards to the claimed properties which were subject of the Claims; therefore the Claims were considered as uncontested.
 6. The Executive Secretariat of KPA established that the cadastral parcel no 460/11(at which parcel was located a house) was previously subject to the adjudication of HPCC upon the application of the Appellant's husband (R. V.). The Claim was dismissed by the HPCC in its Decision no. HPCC/D/189/2005/C, dated 30 April 2005. According to paragraphs 12, 13, 26 and 27 of the Cover Decision that applies especially to the claim, V. failed to

- produce any verified documentary evidence to prove that he had possession of the property concerned or any proof of a property right, which conferred the right to take a possession of the claimed property.
7. According to the Verification Report of the Executive Secretariat of KPA, the claimed properties were found registered on the name of the third parties as follows:
 - The cadastral parcel no 460/11 was found listed on the name of H. E. The changes were done based on the Request for the Division of the Property No 795/08 dated on 06 May 2008.
 - The cadastral parcel no 460/2 was found listed on the name of M.B. The changes were done based on the Judgment C. Nr. 460/2002 dated on 29 September 2005
 - The cadastral parcel no 3/7 was found to be undivided with the cadastral number 3 listed under the category of a Socially Owned Property on the name of the Enterprise “Ekonomia Pyjore”
 8. The Appellant was contacted by the Executive Secretariat of the KPA in order to submit additional documents for proving the alleged property right of her husband. In addition, on 13 December 2013, she was provided with the written request of the same nature, but despite the effort made by the Executive Secretariat of the KPA, the Appellant failed to submit the requested additional documents to support her claim.
 9. Therefore, on 27 November 2013, the Kosovo Property Claims Commission (henceforth: the KPCC), with its Decision KPCC/D/A/220/2013 refused the abovementioned Claims with the reasoning that the Appellant has not established any property right of the alleged property right holder over the claimed properties, with positively verified documents.
 10. On 16 April 2014 the KPCC served on the Appellant with the KPCC’s Decision.
 11. On 12 May 2014 the Appellant filed the above mentioned Appeals.

Allegations of the appellant

12. The Appellant alleges that the KPCC Decision is based on incomplete determination of the factual situation and misapplication of material law.

13. She alleges that her husband concluded an informal Contract on Purchase of the claimed properties on 28 August 1991 due to law on limitations to exchange the property that were in force and this was not something unusual at that period of time.
14. According to the Appellant the KPA acknowledges that rights to Albanians, moreover, one of the mandates of the HPCC was to confirm informal Purchase Contracts.
15. She proposed the Court to schedule the hearing session in order to present the witnesses than can testify regarding the matter.
16. By the end of her Appeal the Appellant proposed the Supreme Court of Kosovo to accept her appeal as grounded and to confirm the ownership right over the claimed properties.

Legal reasoning

Admissibility of the appeal

17. The Appeal is filed within the time limit of 30 days set in Law No. 03/L-079 Article 12.1 and is admissible. The KPA Appeals Panel has the jurisdiction to examine the Appeal.

Joining of the appeals

18. According to section 13.4 of Law No. 03/L-079, the Supreme Court can decide on joined or merged appeals, when such joining or merger of claims has been decided by the Commission pursuant to Section 11.3 (a) the law. This section allows the Commission to take into consideration the joining or merger of claims in order to review and render decisions when there are common legal and evidentiary issues.
19. The provisions of Law on Civil Procedure that are applicable in the proceeding before the Appeals Panel of the Supreme Court pursuant to Section 12.2 of Law No. 03/L-079, as well as provision of Article 408.1 as read with Article 193 of the Law No. 03/L006 on Contested Procedure, provide for the possibility of joining of all claims through a ruling if that would ensure court effectiveness and efficiency of the case.
20. In the text of appeals filed by the appellant, the Supreme Court observes that apart from a different case number for which the respective appeal is filed, the facts, the legal grounds

and the evidentiary issues are exactly the same in all the cases. Only the cadastral parcels, subject of the property right which is alleged in each claim, is different. The appeals are based on the same explanatory statement and on the same documentation. Moreover, the KPCC's legal reasoning for the claims is the same one.

21. The appeals registered under the numbers GSK-KPA-A-176/14, GSK-KPA-A-177/14 and GSK-KPA-A-224/15 are joined in a single case under the number GSK-KPA-A-146/14.

Merits of the appeal

22. The Supreme Court of Kosovo reviewed the Appealed Decision pursuant to the provisions of Article 194 of LCP, and after the assessment of allegations in the Appeals it found that the KPCC has made a correct Decision, based on a thorough and correct procedure. Accordingly the Supreme Court finds the appeals unfounded.
23. First of all, the Appellant alleges that her husband concluded an informal Contract on Purchase of the claimed properties on 28 August 1991 due to the Law on limitations to exchange the property that were in force and this was not something unusual at that period of time.
24. The allegation as such does not stand. This is because the Appellant refers to the Law on Changes and Supplements to the Law on the Limitation of Real Estate Transactions No. 22/91 that was published at the Official Gazette of the Republic of Serbia, No. 22 on 18 April 1991 and came into force 19 April of the same year. Article 3 of this Law states as follows:

The Ministry of Finance– Directorate for Property - Rights Affairs will allow a real estate transaction if it has assessed that the transaction does not have an effect on the alteration of the national structure of the population, or on the emigration of members of a particular nation, or a nationality respectively, and when that transaction does not provoke commotion, or insecurity and inequality towards the citizens of another nation, or respectively another nationality.

Bearing in mind that in the case at hand both, the seller and the buyer are of the same nationality, there were no legal obstacles leading the parties subject of the sale transaction to not formalize the abovementioned Contract.

25. Secondly, as far as it concerns to the allegation of the Appellant that one of the mandates of the HPCC and KPA as the HPCC's successor was to confirm informal Purchase

Contracts, the Supreme Court will give a short summary of the reasons and the conditions for approval of this type of the transactions.

26. It is not disputable that the HPCC had exclusive jurisdiction over the Claims by individuals who entered into informal transactions of residential real property on the basis of the free will of the parties subsequent to 23 March 1989. Notably, the HPCC had to determine whether the Claimant had acquired an ownership right over a property through an informal transaction. In successful cases it ordered the registration of the ownership right in the appropriate cadastral record. This category of claims aimed to establish certainty of title to those who entered into an informal transaction in spite of the Law on Changes and Supplements on the Limitation of Real Estate Transactions (Official Gazette of the Republic of Serbia, 22/91, 18 April 1991) that restricted those sales among parties which aimed, among others, at 'altering the national structure of the population'. This concerned sales from Kosovo Serbs to Kosovo Albanians and as such, the Appellant's claim does not fall under this category.
27. Moreover, through the UNMIK Regulation 1999/10 dated on 13 October 1999, The Law on Changes and Supplements on the Limitation of Real Estate Transactions (Official Gazette of Republic of Serbia, 22/91 of 18 April 1991) was declared as discriminatory in nature and that is contrary to international human rights standards and as such it was REPEALED.
28. As a matter of fact, the Appellant's husband previously applied to HPCC asking for re-possession of the cadastral parcel no 460/11 (at which it is located a house) which was allegedly lost during the conflict. HPCC in its Decision of 30 April 2005, HPCC/D/189/2005/C, dismissed the claim because the Appellant's husband failed to produce any verified documentary evidence to prove that he ever had possession of the property concerned.
29. The KPCC and KPA Appeals Panel of the Supreme Court do not have the jurisdiction over the cases of HPCC because the provisions of the UNMIK Regulation 2000/60 do not preview any legal remedies (appeals or extraordinary legal remedies) against the final decisions of the HPCC – argument ex. Sections 22 and 25 *ibid*. In this respect is also the jurisprudence of the Constitutional Court of Kosovo – see Case No. KI104/10, para 64 and 74.
30. Nevertheless, it is important to note that the case at hand is not considered to be *res judicata* because the Appellant's husband clearly seeks to get repossession of the house located at

the cadastral parcel no 460/11 before the HPCC whiles regarding the claim filed with KPA, the Appellant bases her claim on ownership over three cadastral parcels.

31. The Supreme Court also evaluated the Appellant's motion that the Supreme Court schedule a hearing session where she will present witnesses for testifying regarding the claimed property. The court considers that the hearing session proposed by the Appellant is not necessary because the facts, circumstances, and allegations of her are sufficient to serve as basis in order to render a meritorious decision.
32. Finally, the KPCC based its Decision on the fact that the KPA Executive Secretariat and the KPCC had made a negative verification in the documents, on which the Appellant bases her claim. The Executive Secretariat of KPA had not been able to obtain *ex officio* any evidence that supported Appellant's Claim.
33. Based on this, the KPCC found that Appellant had failed to establish any property right over the disputed property.
34. The Appeal from Appellant repeats the same allegations. No new evidence has been submitted with the Appeal.
35. Accordingly the Supreme Court finds that no violation of the substantial law or incompletely establishment of the facts has been made.
36. 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

37. 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.

Sylejman Nuredini, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Beshir Islami Judge

Sandra Gudaityte, EULEX Registrar