

**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-124/12

**Prishtinë/Pristina,
17 October 2013**

In the proceedings of:

B. T.

Claimant/Appellee

vs.

H. Z.

Respondent/Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Elka Filcheva-Ermenkova, Presiding Judge, Esma Erterzi and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/100/2011(case file registered at the KPA under the number KPA 06113) dated 23 February 2011, after deliberation held on 17 October 2013, issues the following:

JUDGMENT

- 1- The appeal of H. Z. from Zakut, Podujevë/Podujevo Municipality, dated 18 September 2012, is rejected as unfounded.
- 2- The decision of Kosovo Property Claims Commission KPPC/D/A/100/2011 (case file is registered in KPA under 06113), dated 23 February 2011, is confirmed.
- 3- The appellant has to pay the cost of the proceedings in the amount of 80.00€ (eighty euro) within 30 (thirty) days from the day this judgment is delivered or otherwise through compulsory execution.

Procedural and factual background:

On 26 December 2006, B. T. filed a claim with the Kosovo Property Agency (KPA), seeking confirmation of property right over cadastral parcel 275, class IV field, registered in the Possession List no. 17. She explained that this immovable property was usurped by unknown persons and that she sought re-possession of that property. The property was lost as a result of circumstances that occurred in 1998/1999 stating that the date of loss was 04 January 1999.

To support her claim, she provided the KPA with the following documents:

- Possession List from Immovability Cadastre Service in Podujevë/Podujevo Municipality dated 22 January 2002 (parallel body), by which it is ascertained that the property right holder over this immovable property is M. M.
- Marriage Certificate issued by Podujevë/Podujevo Municipality dated 15 December 1992 by which it is ascertained that claimant B. M. daughter of M. M, was married to M.T. and took his last name.
- Through the Ruling of Municipal Court in Prokuplje T.nr.792/07, dated 24 September 2007, following the death of M. M. from Prokuplje, the daughters T.B., Ć.S. and M. N. were declared inheritors to 1/3 of the ideal part of the cadastral parcel 275, class IV field with surface area of 0.18.09 ha, registered in the Possession List 17, Cadastral Zone Zakut, Podujevë/Podujevo Municipality.
- Claimant's identification card issued by the competent body in Podujevë/Podujevo Municipality on 21 July 1998.
- UNMIK Possession List no.17 issued by the Directorate for Cadastre, Geodesy and Property of Podujevë/Podujevo Municipality, dated 15 August 2007, by which it is ascertained that the property

right holder over this immovable property, cadastral parcel 275 at the place called “Kluq-nën rrugë”, class IV field, with surface area 0.18.09 ha, is M. M..

- Through the Certificate on Immovable Property Rights no.UL71712034-00017, dated 25 May 2011, of Zakut Cadastral Zone in Podujevë/Podujevo Municipality, for the parcel no. 275 at the place called “Kluq nën rrugë” with surface area of 1809, it has been ascertained the in the capacity of owners of 1/3 of the ideal part were registered T. M. B., the claimant and M. M. N. and Ć.M. S.

In 2007, the KPA notified the claim by putting up a sign at the place where the parcel was allegedly located. In 2010, KPA again notified the claim by publishing it in the Notification Gazette no. 3 and in the UNHCR Property Bulletin Office. The Gazette and the List were left with a store owner at the entry of village Zakut who agreed to make them available to the interested parties. The same publications were also left at the Municipal Court, Municipal Assembly in Podujevë/Podujevo, as well as in the offices of several competent municipal authorities in Podujevë/Podujevo.

Within the 30 days legal time frame, pursuant to provision of Section 10.2 of UNMIK Regulation 2006/50, amended by Law No. 03/L-079, no parties expressed interest to take part in the proceedings regarding the property that is subject of the claim; that is, no party contested the validity of the claim within the legal time frame of 30 days.

The Executive Secretariat positively verified the said documents as valid and relevant, which confirm the property interest and represent legally valid grounds for confirmation of ownership.

Kosovo Property Claims Commission (KKPK), in relation to the claimed property, with its decision KPCC/D/A/100/2011, dated 23 February 2011, confirmed the property right over 1/3 of the ideal part of the property that is subject of the claim by returning it to the claimant’s possession. In its reasoning the Commission stated that she was not the property right holder over the claimed property at the date the possession of that agricultural property was lost; however she later provided the Ruling on Inheritance and the Certificate on Immovable Property Rights to prove her right over the said property.

On 15 July 2011, the decision of KPCC/A/100/2011, dated 23 February 2011, was served to the claimant.

On 18 September 2012, the respondent/appellant filed an appeal. In his appeal he states that the appeal decision was rendered through erroneous and incomplete determination of the factual situation as well as erroneous application of the substantive law. This is because his father purchased parcel 275 from M. in 1981. Purchase documents were burnt during the war in Kosovo, which he proves by a municipal certificate.

Whereas on 1 September 2011, A. B. from Podujeva filed a request with KPA in order that this body help him establish contact with B. T. from village Zakut, Podujevë/Podujevo Municipality, for the purchase of agricultural property located at the same village.

The appellee in her submission dated 22 October 2012 stated that according to the Inheritance Ruling T.nr. 792/07, dated 24 September 2007, issued by the Municipal Court in Prokuplje, the three sisters were declared inheritors of parcel 275, with surface area of 0.18.09 ha, and that her father did not sell that agricultural land to anybody. She explained that the appellant asked her to sell him the immovable property two months ago but he did come to her after she had told him the price.

Legal reasoning:

Admissibility of the appeal:

The appeal is admissible although the appellant was not a party in the proceedings before the KPCC. This circumstance cannot go to the detriment of the appellant since as a matter of fact he was not duly notified about the claim. Notification was made through publication of the claim in the KPA Notification Gazette and UNHCR Bulletin. This, however, does constitute “reasonable efforts” to notify the claim as foreseen by Section 10.1 of the Regulation only in extraordinary cases. Such a case cannot be attributed to the extraordinary circumstances. Since the court cannot rule out that the appellant was not informed about the claim, he should be admitted as party in the proceedings. His appeal is admissible.

However, the appeal is unfounded.

The Supreme Court of Kosovo accepted as just, grounded, and lawful the factual ascertainment and legal conclusion of the KPCC decision when recognized the claimant’s property right over the agricultural immovable property that is subject of the claim, as well as to return it to the claimant’s possession and use. Based on the correct and complete determination of the factual situation, the KPCC rightly applied the substantive law through application of Article 20 of the Law on Basic Property Relation when it decided that the Certificate on immovable property rights no.UL717112034-00017, dated 25 May 2011, Zakut Cadastral Zone in Podujevë/Podujevo Municipality, for the parcel no. 275, at the place called “Kluq nën rrugë” with surface area of 1809, registered in the name of claimant to the 1/3 of the ideal part, represents sufficient legal basis for confirmation of ownership.

This legal provision stipulates that the ownership right can also be acquired by decision of the government authorities or of competent court, which in this case is the Ruling of Prokuplje Municipal Court T.nr.792/07,

dated 24 September 2007, for the cadastral parcel no. 275, class IV field with a surface area of 0.18.09 ha, by which, following the death of M. M. from Prokupje, inheritors to 1/3 of the ideal part was declared T. B., registered in the Possession Liste 17, Zakut Cadastral Zone, Podujevë/Podujevo Municipality. Therefore, pursuant to Article 3 of the Law on the Establishment of the Real Property Rights, the claimant registered in her name the property that is subject of the claim for the 1/3 of the ideal part according to the Certificate in Immovable Property Rights no.UL717112034-00017, dated 25 May 2011, of Zakut Cadastral Zone, Podujevë/Podujevo Municipality.

The Supreme Court also reviewed and evaluated the appellant's allegations that his father had bought parcel no. 275 from M.in 1981 and that the purchase document was burnt during the last war in Kosovo, but it found that such allegations were ungrounded and inadmissible. This is because, pursuant to provision of Article 20 of the Law on Basic Property Relations, the property right is acquired based on valid legal affairs and by inheritance. Whereas Article 33 of this Law stipulates that on the basis of legal work the property right over a real estate shall be acquired by registration into the "public notary books" (cadastral books) or in some other way that is prescribed by law. Pursuant to Article 4, paragraph 2 of the Law on Transfer of Immovability, it is foreseen that the contract for immovable property transfer is concluded in written form and that the contractor's signatures are certified by the competent court. In addition, paragraph 3, Article 4 of the same law stipulates that a contract which was not concluded in this manner does not produce legal effect, due to the fact that the appellant presented no legally valid document as per these legal provisions in order to confirm his allegations pertaining to the purchase of immovable property that is subject of the claim; thus, such allegations result as ungrounded.. As a matter of fact, the appellant did not refute the claimant's allegations that the appellant called the claimant to purchase this property but upon hearing the sale price he did not call again. However, pursuant to provision of Article 3 of the Law on Basic Property Relations, the court has no competencies and jurisdiction to review and evaluate the claimant's allegations about the possibility of purchase of this immovable property because that is the owner's/seller's absolute right.

Based on this, it follows that certification of a contract by a competent court is a constitutive element without which it is invalid. If a court-legalised contract had existed, then it would have been easily obtained from the state archive of the city or the archive of competent municipal court. In addition, the court also reviewed the certificate of Podujeva Municipal Assembly, dated 08 April 2003, by which it is ascertained that the house of F. Z. was burnt during the last war, but that certificate was not issued to the name of the appellant. However, even if that certificate had been in his name it would have had no bearing on this legal matter being decided differently.

Therefore, based on the above and pursuant to provision of Section 13.3, subparagraph C of UNMIK Regulation 2006/50, as amended by the Law 03/L-079, the court decides as in the enacting clause of this judgment.

Costs of the proceedings:

Pursuant to Annex III, Section 8.4 of AD 2007/5 as amended by Law No. 03/L-079, the parties are exempt from costs of proceedings before the Executive Secretariat and the Commission. However such exemption is not foreseen for the proceedings before the Appeals Panel. As a consequence, the normal regime of court fees as foreseen by the Law on Court Fees (Official Gazette of the SAPK-3 October 1987) and by AD No. 2008/02 of the Kosovo Judicial Council on Unification of Court fees are applicable to the proceedings brought before the Appeals Panel.

Thus, the following court fees apply to the present appeal proceedings:

- Court fee tariff for the filing of the appeal (Section 10.11 of AD 2008/2): € 30
- Court fee tariff for the issuance of the judgment (sections 10.21 and 10.1 of AD 2008/2) taking into account that the value of the property in question can be reasonably estimated to be over € 10.000.00 € 50.00.

These court fees are to be borne by the appellant who loses the case. According to Article 46 of the Law on Court Fees, when a person with residence or domicile abroad is obliged to pay a fee, the deadline for the payment may not be less than 30 days and no longer than 90 days. The Supreme Court decided here that the appellant has to pay the cost of proceedings within 30 days from the day the judgment was served to him/her. Article 47.3 provides that in case the party fails to pay the fee within the deadline, the party will have to pay a fine of 50% of the amount of the fee. Should the party fail to pay the fee in the given deadline, enforcement of payment shall be carried out.

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.

This judgment does not preclude the claimant's right to refer the claims to competent courts outside the jurisdiction foreseen by the provisions of Section 3.1 of UNMIK Regulation 2006/50 as amended by Law 03/L-079.

Elka Filcheva-Ermenkova EULEX Presiding Judge

Sylejman Nuredini, Judge

***Esmā Erterzi*, EULEX Judge**

Urs Nufer, EULEX Registrar