

**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-083/12

**Prishtinë/Priština,
12 November 2013**

In the proceedings of

S. R.

Claimant/Appellee

vs.

B. K.

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/112/2011 (case file registered at the KPA under No. KPA 33473), dated 22 June 2011, after deliberation held on 12 November 2013, issues the following:

JUDGMENT

The decision KPCC/D/A/112/2011, dated 22 June 2011, in its part referring to the case registered with the KPA under the number KPA 33473, is annulled as rendered in the absence of jurisdiction, and the claim is dismissed as inadmissible.

Procedural Background

1. On 30 March 2007, the claimant S.R., in his capacity as the member of the family household, filed a claim with the Kosovo Property Agency (KPA) asking for repossession of the cadastral parcel no 1792, 1793 and 1794 in the place called “Svracak”, Gornji Svracak, Vushtrri/Vučitrin. The claim was registered with the KPA under case no KPA 33473.
2. KPA initially notified the property on 24 April 2009 by means of placing signs which was repeated through publication of the notification in the Gazette on 22 July 2010, based on the Resolution of the Kosovo Property Claims Commission (KPCC) dated 8 March 2010, numbered KPCC/RES/17/2010 for correct identification and proper notification of the claimed property.
3. Since the claim was not contested, on 22 June 2011, with its Decision No KPCC/D/A/112/2011, the KPCC decided that the claimant established the ownership right of the property right holder and granted the claim.
4. On 7 June 2012, the appellant B. (Sh.) K. filed an appeal challenging the KPCC Decision.
5. The appeal was served on the claimant/appellee on 30 August 2012. He did not file a response to the appeal.
6. On 6 December 2012, the KPA Appeals Judge issued an order to the claimant/appellee giving the opportunity to reply to the appeal. The order was served on the claimant/appellee on 17 December 2012; however he did not respond to this order, either.

Factual Background

7. The claimant claimed that his father late P. R. was the owner of the parcels in dispute. He provided the possession list no 1505 issued by Department for Cadaster Geodesy and Property, Municipality of Vushtrri/Vučitrin, indicating the registration of the parcel no 1792, 1793 and 1794 in the name of P.R. The said possession list was positively verified by the KPA.
8. The KPCC, considering that the claimant provided the documents showing his relationship with the registered owner and based on the allegation of the claimant that he lost the possession due to the circumstances related to the conflict granted the claim.
9. The appellant did not participate to the proceedings before the first instance. In his appeal, he did not challenge that the parcels in dispute were registered under the name of the claimant’s father. However, he

alleged that they bought all those parcels from S,(P,) R, in 1996 and that they paid the full price in the amount of 12000 DM. He further asserted that when they talked on the phone on 30 May 2012, this sale was confirmed by S. R., the claimant.

Legal Reasoning

Admissibility of the Appeal

10. According to the documents in the KPA file, the parcels were visited on 24 April 2009; however, it was noticed that the placement of the signs were not carried on the right parcels in dispute. Based on the Resolution of the KPCC mentioned above the same publications were made once again through Gazette in 2010 to correct the notification.

11. Section 10.2 of UNMIK Regulation 2006/50, as amended by Law No. 03/L-079, provides that any person other than the claimant who is purporting to have a right on the disputed property shall become party of the proceedings provided that such person has informed the Executive Secretariat of his/her intention to participate in the proceedings within 30 days of being notified of the claim. For this intention, the person in question has to be informed of the proceeding that had been initiated. In the case at hand, the appellant did not file a notice of participation to the proceedings after the publication of the claim in accordance with Section 10.1 of the Regulation. However, he cannot be considered as having been notified properly regarding the proceedings in front of the KPA, since no physical notification took place on the right parcel which was only carried out through publication in the Gazette in 2010. Therefore, his right of appeal has not been precluded simply because of this reason.

12. The KPCC Decision was not served on the appellant. There is no data in the file on the date of awareness of the appellant of the KPCC Decision. Thus, the appeal is to be considered timely and admissible.

Jurisdiction

13. According to Section 3.1 of the Regulation, the KPCC has the competence to resolve conflict related claims involving circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999. Thus, a claimant is not only to provide an ownership title over a private immovable property but also to show 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. Both conditions are to be met.

14. In the case at hand, the claimant S. R. presented a possession list indicating the registration of the land in the name of his predecessor as verified by the KPA. However, with the filing of the appeal the matter became contested. The appellant B. K. claimed that he bought the said properties in 1996. The claimant did not produce any counter argument or evidence to prove that the loss of the possession of the properties relates to or results from the armed conflict that occurred in Kosovo in 1998/1999. The existence of such sale was not contested by the claimant/appellee despite he was given the opportunity to respond the allegations of the appellant twice. He neither replied the appeal nor the order to this end. This implies that the claimant did not lose the possession of the claimed property related to or resulting from the armed conflict but due to an

alleged sale contract that took place between his predecessor S. (P.) R. and the buyer Sh.K. before the conflict.

15. Accordingly, the Supreme Court finds that the matter is not within the jurisdiction of the KPCC. Taking into account that KPCC decided on the merits of the claim despite it lacked jurisdiction since the loss of possession of claimed property has no causal link with the armed conflict, the Supreme Court considers that the appealed decision was taken by essential violation of the provision of Article 182 paragraph 2 sub paragraph (b) of the Law on Contested Procedure (LCP) which *mutatis mutandis* is applied in the proceeding before it pursuant to Section 12 of the UNMIK Regulation, as amended by Law No 03/L-079. Therefore, the same KPCC decision pursuant to Article 198 paragraph 1 of LCP should be annulled and the claimant's claim be dismissed.

Legal Advice

19. 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.

Elka Filcheva-Ermenkova, EULEX Presiding Judge

Esma Erterzi, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar