

**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-021/13  
Prishtinë/Priština,**

3 April 2015

In the proceedings of:

**A. B.**

Address ...

*Appellant*

vs.

**M. A.**

Address ...  
Serbia

*Appellee/Claimant*

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Esma Erterzi and Rolandus Bruin, Judges, on the appeal against the decision of the Kosovo Property Claims Commission (KPCC) KPCC/D/A/140/2012 (case file registered at the KPA under number KPA14801), dated 29 February 2012, after deliberation held on 3 April 2015, issues the following

## **JUDGMENT**

- 1- **The appeal of the Appellant A. B. against the decision of the Kosovo Property Claims Commission KPCC/D/A/140/2012 (case file registered at the KPA under number KPA14801), dated 29 February 2012, is accepted.**
  
- 2- **The decision of the Kosovo Property Claims Commission KPCC/D/A/140/2012, dated 29 February 2012, regarding the case file registered at the KPA under number KPA14801, is annulled as it is rendered in the absence of jurisdiction.**
  
- 3- **The claim of the Claimant in case no KPA14801 is dismissed as inadmissible due to lack of jurisdiction of the KPCC.**

### **Procedural and factual background:**

1. On 4 December 2006, M. A. filed a claim with the Kosovo Property Agency (KPA), seeking repossession of two properties – parcels 5/1 and 5/2 in Potok, Nikodim – Ferizaj/Uroševac with surface of 83 ar and 3 sq. m and 7 ar and 98 sq. m (the claimed properties). The claimant stated that he is the owner of the properties and requested the repossession. The date of loss of possession is indicated as 13 June 1999 in the claim form.
2. To support his claim, he provided the KPA with a decision of the Municipal Court in Uroševac/Ferizaj, dated 8 July 1997, taken in an inheritance procedure (case file 77/96 of the same court) regarding the inheritance of S. A.
3. The KPA informed the potential interested parties about the claim by placing notification signs on the parcel on 8 October 2007. Afterwards and because the notification signs turned out to have been placed in different properties the KPA conducted a new notification procedure but this time by publication in the KPA Notification Gazette No. 8 and UNCHR Property Office Bulletin on 31 August 2010. No party responded to this notification.
4. With the decision KPCC/D/A/140/2012 (case file registered at the KPA under number KPA14801), dated 29 February 2012, the Commission granted the claim. The KPCC

concluded that the Claimant had proven his ownership right with the presented inheritance decision. The decision was served to the Claimant on 24 May 2012.

5. On 11 December 2012, A. B. filed an appeal, claiming that the claimed properties were purchased (by him) from an authorized person, D. P., based on a power of attorney/authorization Ov.br. 24/87. He did not receive the KPCC decision as he was not a party before the KPA procedure but he became aware of the claim during the execution phase of the decision.
6. In support of his allegations he presents:
  - an ID card;
  - a written contract for the purchase of various properties, including the disputed parcels, concluded between D. P. and D. N. as sellers and A. B. as a buyer (the contract has no date and is not certified by a court);
  - power of attorney from 1987, certified by the Municipal Court in Ferizaj/Uroševac with which **S. (S.) A. authorized D. P.** in her name and on her behalf to sell immovable properties, including the disputed parcels – numbers 5/1 and 5/2 - minutes dated 9 February 1992, regarding the execution of the payment for the immovable properties, signed by N. D. as a seller and A. B. as a buyer.
7. The appeal was served on the Claimant (now the Appellee). He responded to the appeal and asked the Court to dismiss it.
8. With the order of the KPA Appeal Panel, dated 23 May 2013, the Claimant/Appellee (hereinafter will be referred only as “Appellee”) was requested to provide further information how he lost the possession of the claimed property and whether it is related to the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999. He was reminded that his claim may be dismissed if he did not comply with the order within the given period of time. The order was served on the Appellee on 28 May 2013, however, he did not respond.
9. On 5 March 2014, another order was issued by the KPA Appeals Judge addressed to the KPA asking it;
  - to clarify (a) whether the loss of possession of the property derived from the armed conflict of 1998-1999 and (b) whether the claimant left the place before the conflict or not;

- to verify whether the documents submitted by the Appellant together with the appeal are authentic.

10. On 4 April 2014, KPA responded to the order of the KPA Appeals Judge after contacting both parties (twice the Claimant) as well as the person who was given an authorization to sell the properties (P. D.), who allegedly bought them in 1987 from the previous owner (S. A.).

11. In its response, it is mentioned that:

- on their initial phone conversation, on 21 March 2014, the Appellee admitted that he was not living in Kosovo prior to the conflict; however, his uncle took care for the claimed properties in his absence.

- the Appellant provided statements of two witnesses, dated 25 March 2014, who in writing confirmed that the Appellant had been using the claimed property since 1992. They both stated that initially in 1987, they bought the claimed properties from the Claimant's mother S. A. and then sold it to the new buyer upon the authorization given to P. D. in 1992.

- this authorization was positively verified at the Basic Court in Ferizaj/Urosevac, by the KPA.

- KPA also contacted with N. D. via phone on 1 April 2014, who confirms the written statement on that the claimed property had been sold to the Appellant in 1992.

- KPA finally contacted with the Appellee again. He remained silent on the allegations of the Appellant and the documents without denying them but expressed that he wished to be released from the claimed property as he did not claim any further legal right over the same. (See in the file the response of KPA to the order of the KPA Appeals Judge).

### **Allegations of the parties**

#### **Appellant**

12. The Appellant alleges that he bought the claimed property in 1992 from the previous owner (S. A.) based on a sale concluded between him and D. P. who was given an authorization to sell it by S. A. (the mother of the Claimant). He claims that he has been in undisturbed possession of the same since then.

#### **Claimant/Appellee**

13. The Claimant considers the appeal inadmissible, because the appellant did not take part in the procedure in front of the KPA.
14. As to the merits of the appeal, in his response, he asserts that his mother S. A. lived until 1995 and she never told him having given any power of attorney to anyone to sell the properties. The amount of money agreed in the purchase is unbelievable (263 000 DM). This amount he says is far from any realistic price for such properties to be purchased. Further, he claims, the contracts themselves are drawn up too clumsily to appear authentic. The contract states, in the part related to the seller, that N. D. concludes a contract based on the alleged power of attorney granted by the claimant's mother, while in the text of the power of attorney it is stated that the authorized person is P. D.
15. In his further communication with the KPA via phone, he admits that he was not living in Kosovo before the conflict.

### **Legal reasoning:**

#### **Admissibility of the appeal:**

16. The appeal is admissible although the Appellant has not been a party in the proceedings before the KPCC. This circumstance cannot go to the detriment of the Appellant as he has not been correctly notified of the claim. The notification was done by publication of the claim in the Notification Gazette of the KPA and the UNHCR Bulletin. This, however, constitutes "reasonable efforts" to notify of the claim as required by section 10.1 of the regulation only in exceptional cases. Such an exception cannot be found in this case. According to well-established jurisprudence of the KPA Appeals Panel of the Supreme Court in this matter, the Court cannot exclude that the appellant was not aware of the claim, he has to be accepted as a party to the proceedings and his appeal is admissible. The allegation of the Appellee in this regard is not upheld by the Supreme Court.

#### **Jurisdiction of the Supreme Court**

17. KPA Appeals Panel of the Supreme Court has the jurisdiction to examine the appeals filed against the decisions of the KPCC according to Section 12 and 13 of the UNMIK Regulation 2006/50, as amended by Law No. 03/L-079. It has jurisdiction in this appeal.

### **On the merits of the appeal:**

18. The Supreme Court after evaluating the file, the appealed decision and the allegations of the parties and the statements of third parties considers that the appeal is grounded.
19. The appellant claims to have purchased the claimed properties from an authorized person. He presents a written contract, concluded on an unknown date between himself in the capacity of a buyer and N. D. and P. D. as sellers. He claims that the purchase was based on a power of attorney given to P. D. in 1987 by the property owner S. A. It is also claimed that there was an agreement between the alleged sellers and the buyer for the payment of the total value which has been put in written on 8 February 1992.
20. In the absence of a verification and certification by a court as well as of date on the contract itself it should be concluded that the alleged transfer of property was agreed sometime between the issuance of the power of attorney on 7 January 1987 and the presented agreement on payment, dated 8 February 1992.
21. The right of property can be acquired by law itself, based on a legal transfer (legal affair) or inheritance - art. 20 of the law on Basic Property Relations (OG SFRY, No 6/1980), applicable at the time of the alleged transfer of property. Whether the purchase contract the Appellant relied on can grant the transfer of the ownership right from the registered owner is an issue to consider. However, before that the jurisdiction of the KPCC is questionable since there are written documents, statements, verified power of attorney certified by a court ,etc. suggesting a transfer of the possession of the claimed properties to the Appellant in 1992, before the conflict.
22. 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 right or user right of private immovable property, including agricultural and commercial 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 1999. In view of this provision, it follows that the jurisdiction of the Kosovo Property Claims Commission (KPCC) is limited exclusively to resolution, adjudication and settlement of

property right claims for private immovable property, including agricultural and commercial immovable property of which possession was lost due to the armed conflict.

23. This matter needed further clarification, in particular with regard to when and how the loss of possession of the property occurred and whether such loss of possession is connected with the armed conflict or not. The Appellee did not respond to the first order of the KPA Appeals Judge.
24. Upon the second order of the KPA Appeals Panel, dated 5 March 2014, addressed to the KPA this time, KPA contacted with both parties and received more information as to the date of loss of the possession.
25. With the additional information gather by the KPA in the appeals proceedings, the Supreme Court contends with that there was a purchase concluded between the alleged representative of the property right holder and the Appellant. Regardless of whether such a contract meets the requirements of the law to transfer the ownership right to the buyer, it is not disputed that the claimed properties were under the possession of the Appellant since 1992.
26. Accordingly, the Supreme Court concludes that the KPCC decision is rendered in the absence of jurisdiction since the loss of the possession of the claimed property did not derive from the conditions of the conflict but from a sale contract concluded between P. D., to whom the mother of the Claimant gave a general authorization to sell the claimed properties- as verified by the KPA with the checks in public records- and the Appellant. Furthermore, the Appellee was not even possessing the properties before the conflict as he admits. Accordingly, the matter falls outside of the jurisdiction of the KPCC as the possession was not lost due to the conflict between 1998 -1999.
27. Therefore, the Supreme Court decides as in the enacting clause pursuant to Section 12.2 and 13.3(a) of the UNMIK Regulation 2006/50, as amended with Law No 03/L-079 and Article 198.1 of the Law on Contested Procedure (Law nr. 03/L-006). The Decision of the KPCC was annulled as it was rendered in the absence of jurisdiction and the underlying claim (in case no KPA14801) is dismissed as inadmissible since the matter was not in the jurisdiction of the KPCC.
28. This judgment is without prejudice of the right of any party to pursue any legal right over the claimed properties with the courts having jurisdiction.

**Legal Advice:**

29. Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by the Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

**Sylejman Nuredini, Presiding Judge**

**Esma Erterzi, EULEX Judge**

**Rolandus Bruin, EULEX Judge**

**Urs Nufer, EULEX Registrar**