

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-226/2015

Prishtinë/Priština,
28 March 2018

In the proceedings of:

A. K.

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Beshir Islami, Presiding Judge, Anna Bednarek and Ragip Namani, Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/A/244/2014 dated 18 June 2014 (the case file registered with the Kosovo Property Agency under the number KPA53874), after the deliberation held on 28 March 2018, issues this

JUDGMENT

1. The Appeal filed by A. K, registered under the number GSK-KPA-A-226/2015, against the Decision of the Kosovo Property Claims Commission KPCC/D/A/244/2014, concerning the case registered with Kosovo Property Agency under the number KPA53874, is rejected as ungrounded.
2. The Decision of Kosovo Property Claims Commission, KPCC /D/A/244/2014, dated 18 June 2014, concerning the case registered with the Kosovo Property Agency KPA under the number KPA53874, is confirmed

Procedural and factual background

1. On 19 December 2007, A. K. (hereinafter: the Appellant) filed a Claim with the Kosovo Property Agency (hereinafter: the KPA) seeking re-possession of the cadastral parcel with the number 268/1 and the cadastral parcel with the number 268/2, cultivated land with a surface area of 2.25.40 ha, both located at the place called “Canovic Brdo”, in the cadastral zone Petrovë/Petrovic, Shtime/Štimlje Municipality (hereinafter: the claimed properties). She stated that she had acquired the ownership of 1/3 of the ideal part of the claimed properties through the annulment of Contract on Sale concluded with the Agricultural Cooperative in 1964. She stated that the loss of possession was a result of circumstances that took place in the period 1998/1999 in Kosovo.
2. To support her Claim, the Appellant provided the KPA with the following documents:
 - A Court Settlement No. 606/1995 concluded on 27 February 1996 before the Municipal Court of Ferizaj/Uroševac between the plaintiffs (among others the Appellant) and the Agricultural Combine of Ferizaj/Uroševac, by which the land parcel No.268, was returned to the Appellant.
 - A Certificate No. 56 issued by the Agricultural Cooperative in Shtime/Štimlje on 4 April 1996 showing that the Appellant had fulfilled all financial obligations as per the Court Settlement.
 - A Copy of the Possession List No.159, issued by the Cadastral Municipality of Lipjan/Lipjan on 7 March 1997, which indicated that the Appellant was the owner of 1/3 ideal part of the claimed property.
 - A Copy of Possession List No.159 issued by the Displaced Cadastral Municipality of Shtime/Štimlje on 9 February 2009, showing that the Appellant was the owner over 1/3 of the ideal part of the claimed property.
3. Notification of Claim was done on 2 July 2008, whereby the claimed property was found to be occupied by unknown persons. On 1 July 2010, the Claim was published in the Notification Gazette No.3 of the KPA and in the Bulletin of the UNHCR Property Office. The Gazette and the Bulletin were left with the village leader who agreed to make them available to the interested parties, as well as with the Municipal Court in Prishtinë/Priština and the KPA Regional Office in Prishtinë/Priština. In addition, the Bulletin and the Gazette were distributed to the UNHCR Headquarters, Ombudsperson, and Kosovo Cadastral Agency (KCA).
4. The KPA *ex officio* found the Certificate for the Immovable Property Rights No. 00268 issued by the Municipal Cadastral Office of Shtime/Štimlje showing the cadastral parcel No.268 was registered as a social-owned land of the Agricultural Cooperative, which had

been subjected to the privatisation process through the Kosovo Trust Agency now Kosovo Privatisation Agency. The parcel was divided and sold to other persons.

5. On 18 June 2014, the Kosovo Property Claims Commission dismissed the Claim with its Decision KPCC/D/A/244/2014. In paragraphs 19 and 23 of the Cover Decision, which according to the certified Decision is applied particularly for the Claim in question, it is said that the claimed property had been placed under administration of the Kosovo Trust Agency (and later under its successor: the Kosovo Privatisation Agency) based on adoption of UNMIK Regulation 2002/12, as amended by UNMIK Regulation 2005/18, and that the Combine “Milan Zečar” was in the liquidation process. For this reason, the claimed property falls exclusively under the jurisdiction of the Special Chamber of the Supreme Court of Kosovo pursuant to Sections 4.1 (c) and 5.1 (a) of UNMIK Regulation No 2008/4 amending UNMIK Regulation No. 2002/13 on the Establishment of a Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Matters Under these circumstances, the Commission concluded that the alleged property right holder did not lose her ability to exercise her right as a result of the conflict in 1998-1999, but as a consequence of the subsequent privatisation process. Consequently, the Claim fell outside the jurisdiction of the commission.
6. The Decision was served on the Appellant on 27 February 2015. She filed an Appeal on 27 March 2015.

Allegations of the Appellant

7. The Appellant stated that the KPCC’s Decision contains essential violations and misapplication of the substantive and procedural law, as well as wrongful determination of the factual situation.
8. The Appellant alleges that she acquired the property rights over the properties in the ideal parts of the co-ownership of 1/3 ideal part of the claimed property in 1996 on the basis of the Court Settlement. By the same Settlement, the Enterprise “was ordered to return the claimed property in her possession”. The Appellant stated that in the cadastral records the property was listed as a co-ownership of her father and uncle, and this was not disputed. The reason for establishment and jurisdiction of the Kosovo Privatisation Agency (previously Kosovo Trust Agency) cannot be the basis for rejection of the Claim, according to the Appellant.
9. The Appellant underlines that the Commission acted in violation of its legal obligation by failing to determine who had used the claimed property before the 1998/1999 conflict. In addition, the Appellant states that there was no responding party and that the ownership of her family was not contested by anyone.
10. Based on the above, the Appellant petitions the Supreme Court to annul the KPCC decision and return the case for reconsideration or to confirm the right of re-possession in his favour.

Legal reasoning

11. After examining the submissions contained in the case file and the Appeal allegations pursuant to Article 194 of the Law No.03/L-006 on the Contested Procedure (Official Gazette of the Republic of Kosovo No.38/2008) (hereinafter: the LCP), the Court, found that the Appeal is admissible and timely filed pursuant to Article 186. paragraph 1, in as read in conjunction with Article 196 of the LCP. This is because the Appellant received the

Decision of the Commission on 27 February 2015, while the Appeal was filed on 27 March 2015. Based on this, it can be ascertained that the Appeal was filed within the time limit of 30 days as foreseen by the provision of Section 12, paragraph 1, of UNMIK Regulation 2006/50, as amended by the Law no.03/L-79. This legal provision foresees that “*an appeal against the KPCC decision can be challenged within 30 days of its receipt*”..

Merits of the Appeal

12. The Supreme Court examined the appealed Decision and found that the Appeal is ungrounded and that the KPCC rendered a correct Decision when it dismissed the Claim due to lack of jurisdiction.
13. Pursuant to Article 3.1 of the Law No.03/L-079, the Claimant is entitled to an order by the Commission for repossession of the property, if the claimant proves not only the ownership over an immovable private property, but also that he or she is currently unable to exercise such property rights due to circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.
14. Firstly, the Appellant alleges that she acquired the ownership right over the claimed property based on the Court Settlement reached in the case No. 606/1995 at the Ferizaj/Uroševac Municipal Court. This Settlement was positively verified by the KPA Executive Secretariat.
15. The KPA Executive Secretariat *ex officio* found the Certificate for the Immovable Property Rights, which reflects the claimed properties registered under the name of the Enterprise “Kooperativa Bujqesore” in Shtime/Štimlje, and that the parcel was divided into smaller parcels and was subject to the privatisation process run by the legal authority for privatisation.
16. Pursuant to Article 20 of the Law on Basic Property Relations (Official Gazette No.6/80), applicable at the time when the Settlement was reached (in 1995), the right of ownership is acquired by itself law, based on legal affairs (legal transfer) and inheritance.
17. However, Article 33 of the Law on Basic Property Relations (OG SFRY, No.6/80) stipulates that on the basis of legal action, the property right over a real estate shall be acquired by registration into the public records or in other appropriate way that is prescribed by the law. The current Law, as well the Law No.03/l-154 on Property and Other Real Rights in Article 36, Paragraph 1, provides that "The transfer of ownership of an immovable property requires a valid contract between the transferor and the transferee as a legal ground and the registration of the change of ownership in the immovable property rights register"
18. This leads to the conclusion that the Appellant's family did not acquire the property right because the requirements of Articles 20 and 33 of the Law on Basic Property Relations (OG SFRY, No.6 / 80) were not fulfilled.
19. The claimed properties are yet registered under the name of the Enterprise “Kooperativa Bujqesore” in Shtime/Štimlje, which means that it was and it still remains a social owned property. The records found by the Executive Secretariat confirm that the property was still treated as social owned and as such it was subject to the privatisation process. For this reason, the jurisdiction remains exclusively with the Special Chamber of the Supreme Court of Kosovo, pursuant to Section 4.1 (c) and Section 5.1 (a) of UNMIK Regulation on the Special Chamber 2008/4, as amended by the Law No. 04/l-033 on the Special Chamber of the Supreme Court of Kosovo on Kosovo Privatisation Agency related matters and the subsequent amendments/supplements of this Law.

20. According to the applicable legislation, the protection of property rights over sociall owned and/or state properties does not fall within the jurisdiction of the KPCC, respectively of the KPA Appeals Panel.
21. Based on what was mentioned above, the Supreme Court ascertains that the KPCC correctly established that the Appellant did not lose the possession of the claimed property because of the conflict of 1998-1999, but as a result of being included in a privatization process by the Kosovo Trust Agency now the Privatization Agency of Kosovo.
22. The Supreme Court concludes that there was no violation of substantive law or incomplete determination of the factual situation. The Cadastre officials stated that as a result of privatisation process, changes were made in the records and the property was divided into smaller parcels and were registered under the names of other persons.
23. This Judgment does not prejudice any property right for the current possessor nor is it an obstacle for the parties to initiate proceedings before the competent body or competent court if they find it in the legal interest
24. Based on the above and in accordance with Article 13.3 sub (c) of Law 03/L-079, it has been decided as in the enacting clause of this Judgment.

Legal advice

Pursuant to Article 13.6 of the Law 03/L-079, this Judgment is final and cannot be challenged through ordinary or extraordinary legal remedies.

Beshir Islami, Presiding Judge

Anna Bednarek, EULEX Judge

Ragip Namani, Judge

Timo Eljas Torkko, EULEX Registrar