

**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-104/13

Priština/Prishtine 20 July 2015

In the proceedings of:

Sh K

K village

P

Appellant

vs.

C J,

Represented in first instance by Jugoslav S J

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B , S

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Willem Brouwer and Rolandus Bruin, Judges, deciding on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/179/2012 dated 14 December 2012 (case file registered at the KPA under no. 28039), after deliberation held on 20 July 2015, issues the following:

JUDGMENT

1. The appeal of the appellant Sh K against the Decision of the Kosovo Property Claims Commission KPPC/D/A/179/2012 (as far as it regards the case registered in KPA under no. KPA28039) dated 14 December 2012 is accepted as grounded.
2. The Decision of the Kosovo Property Claims Commission KPPC/D/A/179/2012 (as far as it regards the case registered in KPA under no. KPA28039) dated 14 December 2012 is annulled.
3. The claim of J S J registered in KPA under no. KPA28039 is dismissed due to the lack of jurisdiction.

Procedural and factual background

1. On 26 February 2007, the claimant J S J é filed a claim with the Kosovo Property Agency (KPA) on behalf of his father stating that his father is the owner of the claimed property and that he seeks its repossession. This parcel no.512 with a surface of 4 ha 36ari 16m² is located in Korishtë village, Cadastral Zone Prizren, Prizren Municipality (hereinafter: the claimed property). The appellee states that possession of the property was lost on 13 June 1999 and that the property was usurped by Sh H . The claim is registered in KPA under KPA28039.
2. In order to support his claim, he provided the KPA with the following documents:
 - Decision no.027-1118, dated 7 November 2006, by the Directorate for Cadastre, Geodesy and Ownership in Prizren Municipality which approved the request of S J (claimant's father) to update cadastral records in the name of inheritors K C J (claimant's grandfather) each with 1/5 part of the claimed property.
 - Possession List no.100, dated 4 September 2007, issued by the Directorate for Cadastre, Geodesy and Ownership in Prizren Municipality by which it was ascertained that the parcel which is subject of the claim is located at the place called "Korishtë", Cadastral Zone Prizren, Prizren Municipality and is registered in the name of K C J ;
 - Identification card of J J issued on 5 December 1997 by the competent authority;
3. During the verification of documents by the Executive Secretariat, it was ascertained that the property, that is subject of the dispute, is registered in the name of C J , according to

the Certificate on Immovable Property Rights no.UL-71813037-00675, dated 21 September 2011, issued by the Cadastral Office in Prizren Municipality. For this reason, the claimant was contacted and he confirmed the continuation of proceedings in the name of his uncle C J , and he submitted the authorisation for representation no.VR.35972/2012 dated 17 September 2012 through which C J authorises the claimant, who is his nephew, to represent him in all legal proceedings before UNHCR as well as the Office for Property Matters concerning the claim registered under KPA28039. The authorisation was certified by the Basic Court in Belgrade.

The aforementioned documents were positively verified by the KPA Verification Unit.

4. Based on the case background described by the KPA Executive Secretariat, it follows that the claimant was contacted and he alleged that in 2006 his property was sold to a third party, M A , who being unable to pay the full sale and purchase price resold the property to the claimant's uncle C J in 2009. Based on the sale contract Vr. nr.251/2009, dated 29 April 2009, the cadastral records were updated in the name of claimant's uncle.
5. According to the notification report dated 13 August 2007, the Notification Team had verified the location of the property and had placed the notification sign on that land. Verification of the property was done based on ortophotos, GPS coordinates and by the assistance of inhabitants in the area. According to the verification, the property was agricultural land cultivated and usurped by K K , who claimed legal right over the property in question and he signed the notice of participation as respondent.
6. In his statement dated 27 August 2007, he declares that the property is not used for residential purposes and that he claims legal right over it. In order to prove his allegations, he lodged a testimony with the KPA. In the testimony signed by nine witnesses, the respondent clarifies that the parcel, which is subject of the dispute, belonged to his family which used it without obstructions until 1938, when his family fled to Turkey in order to escape from the persecution by the regime of that time. After returning to Kosovo, about 20 years later, the respondent's family again entered into possession of the said property and has used it uninterruptedly until now.
7. The Kosovo Property Claims Commission (KPCC) in relation to the claimed property, with its decision KPCC/D/A/179/2012 dated 14 December 2012, which refers to the case

registered in KPA under KPA28039, decided to confirm the claimant's property right because he presented sufficient evidence to prove that he is the owner of the claimed property and that he has the right of possession over that property.

8. The decision was served on the claimant on 16 May 2013, whereas to the respondent on 19 March 2013.
9. On 16 April 2013, the appellant, Sh K (hereinafter: the appellant) through the postal service sent his appeal against the KPCC decision. On 22 April 2013, the appeal was received by the KPA.
10. Together with the appeal, the appellant also submitted a number of documents which are not relevant to the case.

Allegations of the appellant

11. The Appellant challenges the KPCC decision with the reasoning that the decision was taken under conditions of erroneous and incomplete determination of the factual situation, as well as wrongful application of the material law. In the appeal, the appellant alleges that his predecessors were the factual owners of the disputed parcel before the Second World War and that they had used the property until 1938, when their property was confiscated by a decision of the regime at that time and it was given to the appellee's family. He declares that his family left Kosovo but came back and after the war they moved into the parcels which had previously been in their ownership. Moreover, he asserts that he was aware of the fact that the appellee's father in 2009 concluded a sale and purchase contract of the contested parcel with M A , a resident of Korishtë village.

Legal reasoning

Admissibility of the appeal

12. The appeal is admissible. It was filed within the period of 30 days as prescribed by Article 12.1 of the Law no. 03/L-079

Jurisdiction

13. The Supreme Court has no jurisdiction to review the appeal.

14. The Supreme Court notes that the KPCC decision was right and lawful when it decided that both the KPCC and the Appeals Panel had no jurisdiction to examine the legality of the acts of nationalisation or expropriation by the former regimes. Therefore, the allegations of the appellant in this part are ungrounded. This is because pursuant to Article 3.1 of the Law no. 03/L-079, the Commission has competence to resolve claims related to the conflict of 1998/1999, which concern property rights that cannot be exercised due to the circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.

15. On the other hand, according to Article 3, paragraph 1, sub-paragraphs a) and b) of the Law no. 03/L-079, a claimant is entitled seek confirmation and repossession of the claimed property when he/she not only proves this right with valid and documented evidence, but that he/she is not now able to exercise his/her property right due to the circumstances related to or resulting from the armed conflict of 98-99'. According to this legal provision, three legal criteria must be met equivalently:

- Firstly, the claimant has to be displaced from the claimed property;
- Secondly, the loss of possession or control over the property has to be as a consequence of the conflict;
- Thirdly, the property or possession cannot now be exercised by him/her.

16. The Supreme Court notes that based on his statement and testimonies, the claimant/appellee has failed to prove that his claim involves circumstances related to or resulting from the armed conflict of 98-99'. In addition, the Supreme Court considers that the loss of possession was a result of voluntary alienation of this property by selling it initially to a third party after the conflict in 2006, then by re-purchasing the same property. Based on this, it follows that the claimant not only was able, but he also exercised his right of possessing the property which is subject of the claim. The sale and then re-purchase transaction indicate that the loss of possession not only is not related to the circumstances of the armed conflict, but the exercise of that property right was not prevented by those circumstances.

17. Therefore, based on submitted testimonies and statements made, it can be confirmed that the KPCC, hence the KPA Appeals Panel of the Supreme Court, have no jurisdiction to decide on this legal dispute because the ascertained facts and administered testimonies have proven that the property right holder has been in uninterrupted possession of the claimed property and that its possession and use were not lost as a result of circumstances that are directly related to or result from the armed conflict that occurred between 27 February 1998 and 20 June of 1999.

Conclusion

1. Based on the reasons presented pursuant to Article 198.1 of the Law on Contested Procedure, the KPCC decision is annulled and the claim is dismissed as inadmissible because the case was not under the jurisdiction of KPCC.

Legal advice

2. 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

Willem Brouwer, EULEX Judge

Rolandus Bruin, EULEX Judge

Urs Nufer, EULEX Registrar