

**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-228/13

Prishtinë/Priština,
29 September 2015

In the proceedings of:

A. Q. A.

Mitrovicë/Mitrovica

Appellant

vs.

The heirs of **N. M.**

Mitrovicë/Mitrovica

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Rolandus Bruin and Krassimir Mazgalov, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/187/2013 (case files registered at the KPA under number KPA91514), dated 13 February 2013, after deliberation held on 29 September 2015, issues the following

JUDGMENT

1. **The appeal of A. Q. A. is rejected as unfounded.**
2. **The decision of the Kosovo Property Claims Commission KPCC/D/A/187/2013 (case files registered at the KPA under number KPA91514), dated 13 February 2013 is confirmed.**

Procedural and factual background:

1. On 26 June 2007, N. M. (henceforth: the Claimant) filed a claim with the Kosovo Property Agency (KPA), seeking confirmation of her ownership right and repossession initially over three parcels of land. During the processing of the claim the KPA separated the Claimant's initial claim and created a new claim under the number KPA91514 which relates to the parcel number 130, orchard with the surface of 00.47.65 ha, and to the parcel number 131, vineyard with surface 00.05.29 ha, both located in the place called Selo/Plac, cadastral zone Shipol/Šipolje, Municipality of Mitrovicë/Mitrovica (henceforth: the parcels 130 and 131).
2. To support her claim, claimant submitted the following documents at the KPA :
 - Possession List no. 44 issued by Department for Cadastre, Geodesy and Property in the Municipality of Mitrovicë/Mitrovica on 21 October 2003 listing M. M., Claimant's father, as the owner of the parcels 130 and 131.
 - Ruling on Inheritance T. Nr. 537/03, issued by the Municipal Court of Užice, Serbia, on 4 December 2003 according to which, N.M. inherits the parcels 130 and 131 from his deceased father, M. M..
3. KPA verified these documents positively.
4. The Claimant passed away on 19 July 2011. KPA received on 18 November 2011 from M.M., claimant's brother, a Death Certificate No. 203-1-3643/2011-VII issued by Civil Registration Office of the Municipality of Kragujevac on 29 July 2011, according to which N.M. has passed away on 19 July 2011.
5. In KPA verification reports of 2011 and 2012 is established that there have been several changes regarding the parcels 130 and 131. These changes are based on two court decisions. A judgement P.br. 451/03 from Municipal Court of Mitrovicë/Mitrovica, dated 17 May 2004, confirmed by judgment no. Gz.br. 142/04, of District Court of of Mitrovicë/Mitrovica, dated 17 September 2004. In this judgement a third person (M. S.) is found to be property right holder of parts of the

parcels 130 and 131. In a decision on division of the Municipal Court of Mitrovicë/Mitrovica, nr. R.br. 21/2005, dated 2 December 2005 the parcels 130 and 131 were subdivided. From parcel number 130, orchard with the surface 00.47.65 ha, were created two new parcels: parcel no. 130/1 with surface 00.34.08 ha, registered in the name of new co-owners, and parcel no. 130/2 with the surface 00.13.57, that remained in the name of Claimant's father, M. M. Furthermore from parcel no. 131, vineyard with surface 00.05.29 ha, were created parcel no. 131/1 with the surface 00.03.32 ha, registered in the name of new co-owners, and parcel 131/2 with the surface 00.01.97 ha, that remained in the name of Claimant's father, M. M. These changes were updated in the Cadastre on 22 June 2006.

The documents proving the abovementioned changes are attached to the case file.

6. The Executive Secretariat of the KPA contacted on 18 November 2011 S. B., Claimant's sister. She confirmed that the claim could be processed with only the parcels 130/2 and 131/2 as found at the cadastral records. From that moment on KPA processed the claim as only related to parcel no. 130/2 with the surface 00.13.57 and parcel no. 130/2 with the surface 00.13.57 (henceforth: the claimed property).
7. On 5 March 2012, the KPA notified the claimed property by placing a sign on the parcels. The claimed property was found to be a pasture and yard. Parcel 131/2 was found in possession of A. A. (hereinafter: the Appellant).
8. The Appellant participated in the proceedings before KPA as respondent, refuting the claimant's allegations and seeking legal interest for (only) parcel 131/2.
9. To support his allegation, he submitted at the KPA the following evidence:
 - Pre Purchase Contract concluded on 25 November 2005 between M. V. (henceforth: Third Party) as seller and a person I. A. in the capacity of the buyer. The subject of the sale was parcel no. 132/3. [The Supreme Court notes here already that this parcel 132/3 is not a part of the claimed parcel.] Article 3 of the contract specifies that M. V. has sold to buyer also a parcel of land with the surface of 00.02.15 ha north of parcel 132/3. Moreover in Article 3 is said that despite the fact that the seller has bought the land with surface 00.02.15 ha from M. M. 30 years ago, he did not transfer yet the ownership right on his name.
 - Purchase Contract Leg. Nr. 3272/2006 concluded between V. M. as seller of the immovable property and A. A. as buyer on 21 August 2006 and certified by the Municipal Court of Mitrovicë/Mitrovica on 19 September 2006. The subject of the purchase was again parcel no 132/3. Article 5 of the Purchase Contract says that the seller sells to A. A. also 00.02.00 ha of the parcel that is bordering with parcel no 132/3 and that for this part a separate contract will be concluded.

- Receipt No. 0100685/06 dated 19 September 2006 showing that A. A. has paid the amount of 50 Euro to Administration Office of the Municipal Court of Mitrovicë/Mitrovica to legalize Purchase Contract Nr. 3272/2006.
 - A Statement certified before Municipal Court of Mitrovicë/Mitrovica on 19 September 2006, with reference number Leg. Nr. 3273/2006, through which the seller M. J. confirmed that together with the parcel no 132/3, he sold to A. A. 200 m2 of land on the same parcel. He declares that de facto he is the owner of this 200 m2 but that he has not transferred it into his name from its seller M. M..
 - The claim in a lawsuit for recognition of ownership right filed before Municipal Court of Mitrovicë/Mitrovica on 6 April 2009. The lawsuit is filed by A.A.as plaintiff against M. V.and M. M. in the capacity of the respondent.
10. On 13 February 2013, the Kosovo Property Claims Commission (KPCC) with its decision KPCC/D/A/187/2013 granted the claim of claimant for the claimed parcel: the new created parcels 130/2 and 131/2. In the reasoning (paragraphs 18 and 50-54 of the Cover Decision) KPCC reasons – as far as relevant – that Appellant submitted in support of his assertion a purchase contract, which, however, does not relate to the claimed property and that based on the evidence and in the absence of a valid defense by Appellant the claim stands to be granted.
 11. The Decision was served on M. M., Claimant’s brother, on 27 June 2013. On 3 July 2013, the Appellant received the decision.
 12. Appellant filed an appeal with the Supreme Court, received by KPA firstly on 1 August 2013.
 13. The appeal was served on the brother of claimant on 28 February 2014. He responded to the Appeal on 21 March 2014, received by KPA on 27 March 2014.

Allegations of the Appellant

14. Appellant alleges that the KPCC has made an erroneous and incomplete establishment of the factual situation and misapplication of the material and procedural law.
15. KPCC erroneously ascertained that the Appellee has proved her ownership right on parcel no 131/2 in the surface 00.01.97 ha, because the owner of the abovementioned parcel was M. M., the Appellee’s father, and not the Appellee.
16. The Appellant alleges that he has bought the parcel no 131/2 from M. V. who previously bought the same from M. M. M. V did not transfer the property right on his name, thus the parcel no 131/2 still remained on the name of previous owner, M. M.. The Appellant maintains that he

proved the sale transaction by submitting the Pre Purchase Contract, Purchase Contract and Receipt showing that he has paid the taxes for the sale transaction but he failed to transfer the property right on his name due to fact that the seller of the property, who had to transfer the property right in his name, did not succeed in that and subsequently could not realize the second transfer.

17. According to the Appellant, if the Appellee initiated an inheritance procedure by hiding the fact that the parcel no. 131/2 was sold by her deceased father 30 years ago, she misled the court, because legally at the moment of the inheritance procedure her father was not the owner of the parcel no. 131/2.
18. The Appellant alleges further that before his purchase transaction the previous owner of the property, M. M., during a phone conversation with his lawyer, confirmed that he has sold parcel no. 131/2 to M. V.
19. Hence, the Appellant seeks the Supreme Court to quash the decision KPCC/D/A/187/2013 and to send back the claim for reconsideration or to refer the case to the Basic Court in Mitrovicë/Mitrovica.

Allegations of the Appellee

20. M. M. states that the litigious parcel was always in possession of his ancestors. No one has ever sold the same. There is no evidence that M. V. has bought the parcel no. 131/2. Even the Appellant himself declared that he could not transfer the property right on his name, thus, the Appellee asks the Supreme Court to reject the appeal as unfounded and confirm the KPCC decision.

Legal reasoning:

21. The appeal is admissible. It has been filed within the period of 30 days prescribed in Section 12.1 of the Law No. 03/L-079 (UNMIK Regulation 2006/50 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, as amended by Law No. 03/L-079).
22. Based on Section 3.1 of Law No. 03/L-079 KPCC has the competence – as far as relevant here - to resolve conflict-related ownership claims involving circumstances directly related to of resulting from the armed conflict that occurred between 12 February 1998 and 20 June 1999, with respect to private immovable property including agricultural property, where the claimant is not now able to exercise such property rights.

23. The dispute between the parties is only related to parcel 131/2. In appeal the decision of KPCC as far as related to parcel 130/2 is not challenged. Therefore the Supreme Court has to decide whether granting of the claim by KPCC on 131/2 is in accordance with the law.
24. The appeal is ungrounded. The decision of the KPCC is correct; the Court finds neither incomplete establishment of facts nor erroneous application of the material or procedural law.
25. Not disputed is that M. M. was owner of parcel 131/2. This fact also follows from the positively verified possession list no. 44, as meant in paragraph 2 here fore. Also is not disputed that he was not able to exercise property rights on the parcel after the conflict.
26. The dispute arises because Appellant states that in 2006, when the M. family was no longer in possession of the disputed parcel because of the conflict, he concluded a contract on the property with a third person. However, this contract cannot transfer any rights to the Appellant because it was concluded with someone who was not an owner of the property and it is a basic principle in law that no one can transfer rights he/she does not possess (*nemo dat quod non habet*). In 2006 M. V. did not own this property in order to sell it to the Appellant, therefore the latter did not acquire the ownership rights over it, regardless of the fact that he has paid for it to the one who has presented himself as an owner.
27. Furthermore, from the Purchase Contract, mentioned here fore in paragraph 9, follows that a separate contract had to be concluded on parcel 131/2, which Appellant did not present in this proceedings.
28. The Appellee inherited the claimed property from her deceased father through the Ruling on Inheritance which is positively verified by Executive Secretariat of the KPCC, meant here fore in paragraph 2. Other than Appellant alleges in appeal the Supreme Court concludes therefore that Appellee succeeded her father as owner of the claimed property.
29. Consequently the appeal according to Section 13.3 (c) of the Law No. 03/L-079 has to be rejected as unfounded and the decision of the KPCC has to be confirmed as far as it is related to the claim which had to be decided upon in this judgment (KPA91514).

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.

Sylejman Nuredini, Presiding Judge

Rolandus Bruin, EULEX Judge

Krassimir Mazgalov, EULEX Judge

Urs Nufer, EULEX Registrar