

**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-135/13

Prishtinë/Priština,

8 April 2015

In the proceedings of:

I H
V G Str. no.53
F /U

Appellant

Vs.

M Đ
K , Ž 681/z
S

Claimant/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Rolandus Bruin and Willem Brouwer, judges, on the appeal against the decision of the Kosovo Property Claims Commission KKPK/D/A/140/2012 (case file registered at the KPA under the number KPA48394), dated 29 February 2012, after deliberation held on 8 April 2015, issues the following:

JUDGMENT

1. The appeal of I H against the decision of the Kosovo Property Claims Commission KKPK/D/A/140/2012 (case file registered at the KPA under the number KPA48394) dated 29 February 2012 is accepted.
2. The decision of the Kosovo Property Claims Commission KKPK/D/A/140/2012 (case file registered at the KPA under the number KPA48394) dated 29 February 2012 is hereby cancelled and the claim of M Đ registered as KPA48394 dismissed because it does not fall under the scope of the KPCC jurisdiction.

Procedural and factual background

1. On 12 December 2007, M Đ (hereafter: the Claimant) acting on behalf of his deceased father, V Đ, filed a claim with the Kosovo Property Agency (KPA), seeking the confirmation of his ownership right and re-possession of the property located in the village Talinoc i Muhaxherëve, Ferizaj/Uroševac, parcel no. 760, third class field, with a surface of 20 are and 63 m² (hereafter: the claimed property). He states that his deceased father was a co-owner of the parcel and that he has lost the ownership right on 15 June 1999 as a result of the circumstances during 1998/1999 in Kosovo. The Claimant alleges that the property has been usurped and he seeks compensation for using the property.
2. To support his claim among others he submitted:
 - Proposal for physical partition of the property, submitted by the proposer V Đ (represented by M Đ) with the Municipal Court in Ferizaj on 20 February 1998. According to the proposal for physical partition, 1/3 ideal part of the claimed property, parcel no. 760, field of third class with a surface of 20 are and 63 m² would belong to the proposer V Đ.
 - Death certificate no.203-29 issued on 6 June 2006 by the Civil Registry Office of the Municipality of Kraljevo, where it is established that V Đ had died on 30 November 2001.
 - Possession List nr.165 dated 30 October 2007 issued by the Geodesic Institution of Serbia, Center for Cadaster of Immovable Property in Ferizaj/Uroševac, where the claimed property was registered under the name of V Đ as co-owner with 1/4 ideal part.
3. On 6 June 2008, the KPA has made the notification of the property by placing a sign on the place where the parcel was located where it was stated that the property is object of the claim and that the

interested parties may file their responses within a time frame of 30 days. No one filed a response against this notification therefore the claim was considered as uncontested.

4. According to the verification report dated 7 July 2007, the Possession List no. 165 was positively verified.
5. By the Decision nr. KPCC/RES/16/2010 dated 24 February 2010, the KPCC was informed by the KPA Executive Secretariat that the claim was not properly processed by the Secretariat or more specifically that the claimed property was not properly notified and that the Commission was not informed about this fact. The claim was returned back to the KPA Executive Secretariat for further processing by making the correct notification of the property.
6. On 31 August 2010, the KPA once more did the notification of the property but this time by publishing the claim in the Notification Gazette no. 8 and in the UNHCR Property Office Bulletin. The Gazette and the List were left with an owner of a shop in Talinoc i Muhaxherëve/Ferizaj Uroševac who accepted to put them in the disposal of the interested parties. These publications were also left at the entrance and exit of the village Talinoc i Muhaxherëve and at the Municipal Court, Municipal Assembly, and at a number of offices of municipal competent authorities in Ferizaj.
7. Within the legal deadline of 30 days, pursuant to Article 10.2 of the Law nr. 03/L-079, no party has expressed an interest to take part in a proceedings with regards to the property which is subject of the claim; therefore the claim was again considered as uncontested.
 - a. By its decision dated 29 February 2012 (KPCC/D/A/140/2012) the Kosovo Property Claim Commission (KPCC) established that the Claimant had proven that his deceased father V Đ was a co-owner of ¼ ideal part of the claimed property and therefore the Claimant had a possession right over the claimed property.
8. On 25 May 2012, the KPCC decision was served on the Claimant.
9. On 20 May 2013, I H (hereinafter: the Appellant) filed an appeal with the KPA where he stated that his father Asllan Hyseni in 1979 had purchased the claimed property, parcel 760 located in Talinoc i Muhaxherëve from his neighbor V Đ .

Allegations of the Appellant

10. The Appellant explained that his late father has purchased the parcel no.760 from V Đ for the amount of 6 0000 Deutsch Marks, and he paid this amount in full and received the property under possession and use since 1979. The transfer of the ownership from the seller to the buyer could not be done because the seller initially had to resolve an issue with his brothers who were evidenced as

co-owners of the property, then from 1981 the transfer of the property was forbidden by law from the Serbian regime.

11. The appellant alleges that after the year 2000 he has contacted with the heirs of V Đ (V and M) who were aware of the purchase/sale and they prepared a sales contract which they signed and sent to the Appellant. Eventually, he stated that the KPCC decision was incorrect because it was issued in spite of the lack of the documentation and he requested from the Supreme Court of Kosovo to take into consideration his statement and to treat it justly.

12. To support his claim he attached to the appeal the following documents:

- Sales contract concluded on 13 June 1984 between V Đ as seller and S e I H as buyers of the parcel no. 760, field with a surface of 20 are 63 m², as per the possession list 165. The contract was signed by M and V Đ as sellers and S and I H as buyers. The contract has not been legalized.
- Possession List no. 165 issued on 27 February 2006 by the Cadastral Agency of Kosovo, Department for Cadaster, Geodesy and Property of the Municipality of Ferizaj/Uroševac. The claimed property is evidenced under the name of V Đ as co-owner with ¼ of the ideal part.

13. M Đ , the Appellee refused to receive the appeal; however, he submitted a statement on 2 September 2013.

14. On his written statement the Appellee states the following:

“I declare that parcel no.760 with a surface of 20 are and 63 m², located in the cadastral zone, Talinoc i Muhaxherëve, Ferizaj/Uroševac, Possession List nr.165, was sold while my late father V Đ was still alive and that the buyer who is under the possession of the parcel may transfer the ownership right to his name.”

Legal reasoning

Admissibility

15. The appeal is impermissible if the appellant had not taken part in the proceedings before the KPA, unless appellant is an interested party who did not receive a (proper) notification of the claim or otherwise was not aware or reasonably could not be aware of the claim before he filed the appeal (Section 12.1 of the Law no.03/L-079 and see for instance Judgment GSK-KPA-A-095/12).

16. There is no indication that the appellant was informed of the proceedings before the KPA during the notification process or until May 2013. Therefore the appeal is admissible. There is also no doubt that appellant is an interested party.

Merits

17. In his response the Appellee stated the following:

“I declare that parcel no.760 with a surface of 00.20.63 ha, located in the cadastral zone, Talinoc i Mubaxherëve, Possession List nr.165, was sold while my late father V Đ was still alive and that the buyer who is under the possession of the parcel may transfer the ownership right to his name.”

18. This statement has to be considered as a withdrawal of the claim (Article 149 of the Law on Contested Procedure) which is allowed not only before the KPCC but also in the proceedings before the Appeals Panel of the KPA (Article 193 of the Law on Contested Procedure).

19. After the withdrawal of the claim, without any further proceedings the Court shall issue a Judgment by which it rejects the claim which was withdrawn by the Claimant. This, however, has a precondition which is the general rule that the case has to be under the jurisdiction of this court. Nevertheless, this case is not under the jurisdiction of the KPCC/KPA Appeals Panel.

20. According to Section 3.1 of Law No. 03/L-079, a claimant is entitled to an order from the Commission for repossession of the property, if the claimant proves not only the ownership right but also that he/she is not able to exercise such ownership right 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.

21. However, in this case, the appellee admits that this parcel was “sold or given to a third person” in 1984. Thus, the loss of the ownership right is not related to the armed conflict which occurred in Kosovo between 27 February 1998 and 20 June 1999. Therefore, the claim does not fall under the KPCC jurisdiction.

22. In light of the above and pursuant to Article 12.2 under (c) of the Law no. 03/L-079 and Article 198.1 of the Law on Contested Procedure (Law nr. 03/L-006), it was decided to cancel the KPCC decision and to dismiss the claim.

Legal Advice

23. Pursuant to Section 13.6 of the Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, EULEX Presiding Judge

Willem Brouwer, EULEX Judge

Rolandus Bruin, EULEX Judge