

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-178/14

Priština/Prishtinë

22 March 2016

In the proceedings of:

D.M.

Kolasinka 8

Mitrovica

Appellant

N/A

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini Presiding Judge, Beshir Islami and Krassimir Mazgalov, Judges, deciding on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/220/2013 dated 27 November 2013 (case file registered at the KPA under no 00746), after deliberation held on 22 March 2016 issues the following:

JUDGMENT

1. The appeal filed by D.M. against the decision of the Kosovo Property Claims Commission KPCC/D/A/220/2013 dated 27 November 2013, with regard to the claim registered with KPA under No KPA00746 is rejected as unfounded.
2. The decision of the Kosovo Property Claims Commission KPCC/D/A/220/2013 dated 27 November 2013, with regard to the claim registered with KPA under No KPA00746 is confirmed.

Procedural and factual background

1. On 23 April 2007, D.M. (henceforth: the claimant) acting on behalf of his late father D.M. , filed a claim with the Kosovo Property Agency (KPA), seeking ownership right over the property with the surface of 02.35.00 ha, located at place called Bukos, Municipality of Vushtri/Vučitrn. The claimant stated that his late father has bought two cadastral parcels (**he did not specify the parcel numbers**) from D.M. 30 years ago but the property right was never transferred on his father's name.
2. In the claim, it is stated that the claimed property was lost due to circumstances related to the armed conflict that occurred in Kosovo in 1998/99, indicating 1 June 1999 as the date of loss.
3. To support his claim, he provided the KPA with the following documents:
 - Death Certificate no 203-2/207 issued by Civil Registration Office of the Municipality of Vushtri/Vučitrn on 22 September 2004, showing D.M. passed away on 9 February 1982.
 - Birth Certificate no 200-2- 4987/2008-1 on the name of claimant issued by Civil Registration Office of Kragujevac.

4. On 25 April 2013, KPA notified the claim by publishing it in the Notification Gazette no. 11 and in the UNHCR Property Bulletin Office. The Gazette and the List were left to Head of the village in Novolan who agreed to make them available to the interested parties. The same publications were also left at the Municipality, Cadastral Office and Municipal Court of of Vushtri/Vučitrn and KPA Regional Office of Mitrovicë/Mitrovica as well as in the Head Offices of UNHCR, Ombudsperson, OSCE, DRC, PAK and UNMIK Office in North Mitrovica.
5. Within the legal deadline of 30 days, pursuant to article 10.2 of the Law no. 03/L-079, no party has expressed an interest to take part in proceedings with regards to the property which is subject of the claim; therefore the claims were considered as uncontested.
6. The Verification Unit of KPA ex officio found two Certificates for Immovable Property Rights :
 - Certificate no UI-70202010-00014, that lists five cadastral parcels on the name of claimant's late father and
 - Certificate no. UI-702020210-00150 , that lists four cadastral parcels on the name of family M (B.D.M.V.V.)
7. Claimant has been contacted by Executive Secretariat to confirm the numbers of the cadastral parcels that he is claiming for. The latter said that he does not know the numbers but only the surface of property which according to him is 02.35.00 ha (see page no 030 of the case file).

Moreover, the Executive Secretariat of KPA provide the Claimant with an information letter asking him to submit additional documents to support his claim and informed him that if he fails to submit the request documents within 15 days the claim may be refused by the Commission. The letter was received by claimant on 2 September 2013 (see page 178 of the case file) but he did not reply.
8. On 27 November 2013, the Commission with its decision KPCC/D/A/220/2013 refused the claim with the reasoning that claimant has failed to show the ownership or any other property right over the claimed property immediately prior to or during the 1998-1999 conflict.
9. On 7 April 2014, the KPCC decision was served on the claimant.
10. On 6 May 2014, the claimant (hereinafter: the appellant) filed an appeal.

Allegations of the appellant

11. The appellant challenges the KPCC decision by alleging that he has bought parcel no. 539 and parcel no. 220 from B.M. and M.M. in 1981 and he possessed the above mentioned parcels until the year 1999. The appellant added that he never transfer the property right on his name because according to him in the time that he has bought the abovementioned parcels “the given word was well respected” and just if any dispute happen than the parties will refer to respective institutions.
12. In support of the appeal he submitted the following documents:
 - Possession List no 150 issued by Department for Cadastre, Geodesy and Property of the Municipality of Prishtinë/Pristina on 5 May 2014 listing family M (B., D., M., M., V., Z.) as co-owners.
 - Possession List no 149 issued by Department for Cadastre, Geodesy and Property of the Municipality of Vushtrri/Vucitrn on 19 January 1973 listing M.M. as the owner.

Legal reasoning

Admissibility of the appeal

13. The appeal is filed within the time limit of 30 days set in Law No. 03/L-079 Article 12.1 and is admissible.

Merits of the appeal

14. Supreme Court of Kosovo reviewed the appeal pursuant to provisions of article 194 of LCP, and after the assessment of allegations in the appeal it found that the appeal is ungrounded.

15. Based on the case file submission, the appellant filed the claim on behalf of his deceased father as the property right holder before first instance while in his appeal he referred to himself as the owner of the property.
16. The appellant, however, could not prove that he or his father were the property right holders.
17. Except the surface of the property the Appellant did not give the numbers of the cadastral parcels for which he claims, nor he has submitted any evidence supporting his claim even though he was advised by Executive Secretariat of KPA to do so.
18. In the appeal, the appellant declared he has bought the properties from third parties, giving the numbers of the cadastral parcels and supporting possession lists on the name of third parties.
19. However, the new evidences are not considered by the Court. Based on the Section 12.11 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, *new facts and material evidence presented by any party to the appeal shall not be accepted and considered by the Supreme Court unless it is demonstrated that such facts and evidence could not reasonably have been known by the party concerned.* The appellant was contacted by Executive Secretariat of KPA as well as he was officially advised to submit the evidences but he has failed to do so (paragraph 7 of the Judgment) bears the Court to conclusion that the appellant could have used this evidence already in the proceedings of the KPCC.
20. Nevertheless, even if the submitted evidences will be considered by the court, the final outcome will remain the same. This is because the appellant himself confirmed that he did not transfer the property on his name with the reasoning that in 1981 the given word was well respected.
21. According to the article 4, paragraphs 2 and 3, of the Law on Transfer of Immovable Property (Official Gazette of Republic of Serbia no: 43/81), the law that was applicable on the alleged purchase in 1981, the contract on the transfer of rights to immovable property between ownership right holders **shall be concluded in writing**; the signatures of the contracting parties shall be certified by the courts, and contracts which do not comply with this do neither produce any legal binding effect nor any real effect.
22. The Supreme Court finds that the KPCC has made a correct decision, based on a thorough and correct procedure. Accordingly the Supreme Court finds the appeal unfounded.

23. In the light of foregoing, pursuant to Section 13.3 under (c) of UNMIK Regulation 2006/50 as amended by Law 03/L-079, it was decided as in the enacting clause of this judgment.

Legal advice

24. 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

Krassimir Mazgalov, EULEX Judge

Beshir Islami, Judge

Sandra Gudaityte, EULEX Registrar