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-042/13

Prishtinë/Priština,
31 January 2014

In the proceedings of:

B. U.
Viti/Vitina

Appellant

vs.

B.S.
Serbia

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Elka Filcheva-Ermenkova, Presiding Judge, Willem Brouwer and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/92/2010 (case file registered at the KPA under No. 07936), dated 28 October 2010, after deliberation held on 31 January2014, issues the following

JUDGMENT

1. **The appeal of B. U. is founded.**
2. **The decision of the KPCC KPCC/D/A/92/2010 dated 28 October 2010 is annulled as far this decision concerns KPA 07936 due to the lack of jurisdiction.**
3. **The claim of B. S. is dismissed as inadmissible.**

Procedural background:

1. On 9 January 2007, B. S. filed a claim at the Kosovo Property Agency (KPA), seeking confirmation of his property right over a parcel of land at Begracë/Belograce, Kaçanik/Kaćanik, parcel number 137 with a surface of 0.15.28 Ha (hereafter: the parcel).
2. The KPCC in the decision of 28 October 2010 found the claim founded and decided that B. S. had established that he is the owner of 5/18 of the parcel.
3. The file does not give a clue whatsoever that, and if so when, the decision was served upon the appellant.
4. The appellant filed an appeal against the KPCC decision at the KPA on 26 December.
5. The appeal has been delivered to B. S. on 22 July 2013. B. S. did not file a reaction to the appeal.

Factual background:

The Appeals Panel takes as facts as established by the KPCC and not contested by parties or otherwise proven wrong the following:

6. According to a death certificate, V.S. died on 29 November 2005. The certificate was issued by the municipality of Kragujevac Serbia.
7. In a judgment of the municipal court of Kragujevac number O-497/06 of 30 May 2006 it was confirmed that the estate of V. S. consisted of several parcels of land among which the parcel 137, a field measuring 0.15.28 ha.
8. In the same judgment B. S. together with his brothers: V. S. and S.S, inherited the estate. B. 5/18, V. 5/18 and S. 8/18 of the estate.
9. On 4 October 2011 B, V and S signed a written contract of sale with O. T.in which (among other parcels of land) the parcel 137 was sold to O. T. This contract is a part of the file.

Legal reasoning:

Position of parties:

The appellant wants the Supreme Court to confirm that he is the rightful owner of the parcel.

*Jurisdiction (**ex officio**):*

10. The appellant states that he bought the parcel 137 on 28 March 1997 of V. S. To support his statement the appellant has filed a copy of a contract of sale, issued on 28 March 1997.
11. In this contract the seller, V.S, sells a parcel of land to the appellant of 12 ha, situated in Kosum KM Kaçanik/Kačanik. The contract is signed by the appellant, V. S. as the seller and three witnesses: I. I, A.M. and V. S.
12. The appellant further filed a copy of a receipt issued for the (first) payment on 30 March 1997of DM 6.000, signed by the appellant and V. S.
13. On 26 June 2006, the municipal court of Kaçanik/Kaćanik decided on a claim of the appellant against V.S. and V. S. In this decision, no. C 7/03, the municipal court of Kaçanik/Kaćanik decided that the appellant is the owner of two parcels: 137 at the place called Kosum Raga, a field of the 5th class with a surface of 0.15.28 ha, recorded in possession list no 206 CZ Begracë/Belograce, and 138 at the place called Kosum Shoko Bara, a field of the 5th class with a surface of 0.14.53 ha, recorded in possession list 205 CZ Begracë/Belograce.
14. The municipal court of Kaçanik/Kaćanik in its reasoning found proven that appellant actually had bought parcel 137 (and 138) from V. S. on 28 March 1997.
15. As far as the Supreme Court can see this decision of the municipal court of Kaçanik/Kaćanik, the contract of sale as well as the the receipt, were not filed at the KPCC nor part of the file or proceedings in front of the KPCC. In fact the claim in front of the KPCC was uncontested.
16. The above leads the Supreme Court to the conclusion that the appellant's rightful ownership of the parcel 137 as from 28 March 1997 already had been confirmed by an independent judge. And that the KPCC, when taking its decision, has not been aware of all the facts regarding this case.
17. The information regarding the sale of the parcel 137 to the appellant in 1997 and the decision on this matter by the municipal court of Kaçanik/Kaćanik are to be considered as new facts and material evidence as meant in section 12.11 of the UNMIK Regulation 2006/50 as amended by Law No. 03/L-079.
18. The Supreme Court shall nevertheless accept this evidence and not send back the file to the KPCC for reconsideration. Reconsideration could only lead to the conclusion that the ownership has been definitely decided on by the municipal court of Kaçanik/Kaćanik by its decision

aforementioned. The later decision of the municipal court of Kragujevac on the heritage of V.S. has obviously been taken without considering this information.

19. According to Section 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, a claimant is entitled to an order from the Commission for repossession of the property if the claimant not only proves ownership of private immovable property, but also that he or she is not now able to exercise such property rights by reason of circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.

20. The above mentioned shows that, when filing the claim, the claimant B.S. was not, nor has been, the rightful owner of the parcel 137. This status was not directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999. It was due to the fact that his father V. had sold the parcel 137 in 1997 to the Appellant.

21. Therefore the case is outside the jurisdiction of the KPA/KPCC.

Conclusion:

22. Considering the afore mentioned the supreme court ex officio came to the conclusion that the decision of the KPCC has to be annulled due to lack of jurisdiction. And Appellant's claim has to be dismissed.

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 Section 13.6 of UNMIK Regulation 2006/50 as amended by the Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Elka Filcheva-Ermenkova, EULEX Presiding Judge **Sylejman Nuredini, Judge**

Willem Brouwer, EULEX Judge **Holger Engelmann, EULEX Registrar**