

**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-136/12

**Prishtinë/Priština,
10 December 2013**

In the proceedings of

T. D.S.

Claimant/Appellee

vs.

M. K.

Respondent/ Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Elka Filcheva-Ermenkova, Presiding Judge, Esma Erterzi and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/48/2012 (case file registered at the KPA under No. KPA 47408), dated 19 April 2012, after deliberation held on 10 December 2013, issues the following:

JUDGMENT

- 1. The appeal of M.K. filed against the decision of the Kosovo Property Claims Commission KPCC/D/A/48/2012 (case files registered at the KPA under KPA47408) dated 19 April 2012, is rejected as unfounded.**

2. **The decision of the Kosovo Property Claims Commission KPCC/D/A/48/2012 (case files registered at the KPA under KPA47408) is confirmed.**

Procedural Background

1. On 3 December 2007, the claimant T. D. S. in his capacity as the member of the family household of S.B. J., filed a claim with the Kosovo Property Agency (KPA) asking for repossession of the cadastral parcel no 549 in the place called “Lera”, in the cadastral zone Zojic, in Prizren. The claim was registered with the KPA under case no KPA 47408.
2. KPA initially notified the property on 24 June 2008 by means of placing signs which was repeated through publication of the notification in the Gazette on 28 January 2012. The documents submitted by the claimant were served on the respondent on 14 March 2012. M. K. filed a notice of participation to the proceedings alleging ownership right over the property as well.
3. On 19 April 2012, the KPCC with its decision of 19 April 2012 KPCC/D/A/2012 granted the claim of the claimant in KPA case no 47408 and ordered that the claimant is given the possession of the claimed property.
4. The KPCC decision was served on the respondent M.K. on 4 October 2012. He filed an appeal challenging the KPCC Decision.
5. The appeal was served on the claimant/appellee on 11 March 2013. He filed a response to the appeal on 12 April 2013.

Factual Background

6. The claimant/appellee claimed that his grandfather late S. B. J. was the owner of the parcel in dispute. He provided the possession list no 31 issued by the Immovable Property Cadastral Office Prizren, the Republic Geodesy Office of Republic of Serbia, indicating the registration of the parcel no 549 in the name of S.J. The said possession list was positively verified by the KPA via comparison with the public records of the Cadaster in Prizren.
7. The respondent/appellant M.K. also alleged property rights over the parcel asserting that he bought the land from a third party (not from the above-mentioned property right holder or a member of his family). He further alleged that the sale of the land was done through an informal contract witnessed by the villagers and all documents he had were destroyed during the conflict.
8. The KPCC, considering that the claimant provided the documents showing his relationship with the registered owner and based on the allegation of the claimant that he lost the possession due to the circumstances related to the conflict granted the claim.
9. The appellant in his appeal against this decision did not challenge that the parcel in dispute is registered under the name of the claimant’s grandfather. However, he alleged that he bought the parcel from R.K. from

village Zojic. in 1996 and that S. B1. and S. B2. witnessed to this agreement reached between him and R. K. To prove his argument, he relied on the statements of R.K., S. B1. and S. B2. which were verified in Municipal Court in Prizren. He claimed that he was using this land since he bought it in 1996 and never obstructed by anyone. He maintained that he would win the right to the property based on the user rights confirmed by Law of Contracts and Torts.

10. The claimant/appeelle, in his response to the appeal, argued that the contract allegedly made between M. K., the appellant and R.K. is null and void since no one can transfer a right to another one which he does not own. He further claimed that he was never aware of that the appellant was using the property and if he would have observed such a situation he would have interfered with it according to the law. He reiterated his argument that the land was in his possession until he left Kosovo due to the conflict. He also challenged the goodwill of the appellant if he ever used the property since he would have known that he was using another person's land without having a legal title. He claimed he could not protect his legal right due to the circumstance of the conflict and after the conflict the appellant was unlawful possessor.

11. What is contested between the parties is whether the appellant has acquired any ownership right or possession right over the claimed property based on the alleged agreement made between him and a third a party who is not the registered owner in the cadaster or the possession of the land for a while.

Legal Reasoning

Admissibility of the Appeal

12. The appeal has been submitted within the legal time frame of 30 days prescribed in section 12.1 of UNMIK Regulation 2006/50 as amended by Law No 03/L-079 and is admissible.

Jurisdiction

13. According to Section 3.1 of the Regulation, the KPCC has the competence to resolve conflict related claims involving circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999. Thus, a claimant is not only to provide an ownership title over a private immovable property but also to show 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. Both conditions are to be met.

14. In the case at hand, the claimant S.B. J. presented a possession list indicating the registration of the land in the name of his predecessor as verified by the KPA. He claimed he lost the possession due to the circumstances related to the conflict. The appellant did not explicitly challenge this allegation of the claimant as to loss of possession during conflict or produce evidence to prove otherwise but he mainly claimed

ownership right over the property. Thus, the Supreme Court considers that the KPCC had jurisdiction over the claim.

Merits of the claim

15. The Supreme Court of Kosovo, after considering the case file submissions, the appealed decision and the allegations of the appeal found that the appellant's appeal is unfounded. This is because the possession list no 31 issued by the Immovable Property Cadastral Office Prizren, the Republic Geodesy Office of Republic of Serbia, referring to the cadastral parcel no 549, establishes that the claimed immovable property is registered under the name of S.J.. The claimant provided the possession list which was verified by the KPA in comparison with the records of the Cadaster. The claimant proved his grandfather's rights as the property right holder. The appellant failed to provide valid and acceptable evidence to prove the contrary. He did not present a valid sale contract transferring the ownership right from the registered property right holder to him or to the person from whom he alleged that he bought land.

16. The appellant's allegations that the appealed decision was taken by wrongful determination of the factual situation and presenting as evidence the statements of the alleged seller R.K. and two witnesses which were verified with the Municipal Court do not present legally valid evidence to confirm the ownership right over the contested parcel according to Article 4, paragraph 2 of the Law on Movement of Immovable Properties (Official Gazette of R.S.no.43/81) and Article 20 of the Law on Basic Property Relations (Official Gazette of SFRY, No 6/80). According to these legal provisions, in order to acquire ownership it is necessary to have a sales contract made between the registered owner and the buyer in writing that is verified by a competent body such as courts which is lacking in the concrete case. Thus, the appellant failed to prove the link between the property right holder and R.K., subsequently himself as to transfer of the ownership right as required by law.

17. Pursuant to Article 20 of the Law on Basic Property Relations, the property rights holder over this claim immovable property is S. J.

18. On the other hand, the appellant lacks any document to show his legal title over the property such as possession list. The conscientious holder of a real estate, over which somebody else disposes the property right, shall acquire the property right over such an object by adverse possession after expiration of 20 years. Leaving aside whether the appellant was conscientious holder of the real property as required by the law (Article 28 of law on Basic Property Relations), the period of time uncontested possession of the land without contestation of the real property right holder had not yet been completed when the claimant filed a claim with the KPA. Accordingly, he did not meet the conditions of adverse possession, as set in Article 28 and 72 of the Law on Basic Relations, respectively Article 40 of the Law on Property and Other Real Rights, to acquire the ownership right over the parcel, even if he had proven his conscientious possession.

19. The KPCC's appealed decision was right and legal when it recognized the ownership of and returned the properties into the claimant's re-possession. The appealed decision did not contain essential violation of the procedural and substantial law according to the Section 12.3 of UNMIK Regulation 2006/50 as amended by the Law 03/L-079.

20. Therefore, the appellant's appeal is rejected as unfounded according to Section 13.3 (c) of UNMIK Regulation 2006/50 as amended by Law no. 03/L-079

Legal Advice

21. 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.

Elka Filcheva-Ermenkova, EULEX Presiding Judge

Esma Erterzi, EULEX Judge

Sylejman Nuredini, Judge

Holger Engelmann, EULEX Registrar