

**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-151/13

**Priština/Prishtinë,
8 April 2015**

In the proceedings of:

Z M
P J S street no.3/3
N

Claimant/Appellant

vs.

Q H
U ..
20... P

Respondent /Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of: Sylejman Nuredini, Presiding Judge, Willem Brouwer and Rolandus Bruin, Judges, on the appeal against the decisions of the Kosovo Property Claims Commission KPCC/D/A/164/2012 (case file registered at the KPA under the number 06391), dated 5 September 2012, after deliberation held on 8 April 2015, issues the following:

JUDGMENT

1. The appeal of Z M against the decision of the Kosovo Property Claims Commission KPCC/D/A/164/2012 dated 5 September 2012 as far as it regards the claim registered at the KPA under no. KPA06391 is rejected as ungrounded.
2. The decision of the Kosovo Property Claims Commission KPCC/D/A/164/2012 dated 5 September 2012, as far as it regards the claim registered at the KPA under No. KPA06391 is confirmed.

Procedural and factual background:

1. On 1 December 2007, Z R M (hereinafter: the claimant), acting on behalf of her deceased father, D H R , filed a claim at the Kosovo Property Agency (KPA), seeking repossession of the parcel no. 586 – meadow with a surface of 00.22.76 ha, located in the cadastral zone, Dushanova, Prizren Municipality (hereinafter: the claimed property).
2. The claimant states that her deceased father was co-owner of the claimed property. She is unable to exercise here ownership right due to circumstances related to the armed conflict that occurred in Kosovo in 1998/99, indicated 15 June 1999 as the date of the loss. Further, the claimant declares that the claimed property is being used by unknown persons with whom she could not establish contact, and that according to her information buildings have been constructed in the property.
3. To support her claim, she submitted the following documents at the KPA :
 - Birth Certificate no. 1269/18, issued by the Civil Registration Office, Prizren Municipality, dated 1 March 1996 which proves the family relationship between herself and her father.
 - Ruling on Inheritance T.Nr.195/97, issued by the Municipal Court in Prizren on 4 August 1998 according to which, D R inherits 1/3 ideal part of the claimed property from his deceased father, H R .
 - Copy of Plan no. 953-2/2002-485, issued by the Serbian Geodesy Institute, Centre for Immovable Property Cadastre in Prizren, dated 25 October 2002. According to the copy of the plan, the claimed

property, parcel no. 586 with culture meadow and surface of 00.22.76 ha, located in Cadastral Zone Dushanovë, in Prizren Municipality is registered in the name of H R R .

- Possession List no. 72, issued by the Directorate for Cadastre, Geodesy and Property in Prizren Municipality on 4 December 2006. According to the possession list, the claimed property, parcel 586, is divided into two parts, parcel 586/2, with culture meadow and surface of 00.18.76 ha, is under the name of three co-owners (D , M and T R).
 - A written statement no.1825, certified in the Administration for Civil Matters in Niš, through which three witnesses declare that D and D R are the same person.
4. On 8 September 2008, the KPA notified the property by placing a sign where the parcel is located. At the claimed property there was a building used as a premise and in possession of Q H (hereinafter: the respondent). The notification of the property was checked again in March of 2010 and based on GPS coordinates and ortophotos, it was ascertained that property identification was correct.
 5. On 16 September 2008, the respondent participated in the proceedings before KPA, refusing the claimant's allegations and seeking legal interest for the property that is subject of the claim.
 6. To support his allegation, he submitted at the KPA among others the following pieces of evidence:
 - Purchase Contract concluded between Q N as seller of the immovable property and M H as buyer on 17 February 1979. The contract is not legalized and the parcel as object of sale is not specified.
 - Purchase Contract, Leg.Nr.2866/81, concluded on 24 December 1981 between the seller H R and buyer M H . Object of the contract was the claimed property, parcel 586 with surface of 00.05.00 ha.
 - Decision no.04/1-313-423, issued by Prizren Municipal Assembly, Secretariat for Economy, dated 26 November 1981 based on which, M H is permitted to establish a craftsman shop.
 - Statement of Claim P. Nr. 388/82-IV, for handover of immovable property addressed to Prizren Municipal Court on 9 November 1982, by the claimant H R against the respondents (K G , R K, E G, Xh K), among other is also M H.
 - Judgment C. Nr. 388/82, issued by the Municipal Court in Prizren on 9 December 1982 by which the statement of claim of H R is approved and is confirmed that he is the owner of parcel 586. The respondents are obligated to accept it and handover the immovable property to free possession or to pay the monetary value of the property which will be confirmed by special proceedings. It is ascertained that the claimant withdrew the lawsuit against the respondent M H .

- Ruling, Ac.nr. 290/83, issued by Prizren District Court on 10 March 1983. According to the ruling, the Judgment of Prizren Municipal Court K.Nr.388/82, dated 9 December 1982, is quashed and on the adjudicated part of the statement of claim regarding the decision on cost of proceedings and for this part the case is sent back for retrial. The same judgment remains intact regarding the part where the lawsuit against the respondent M H is withdrawn.
 - A written statement dated 15 September 2009. The respondent declared that the claimed property was purchased by his deceased father, M H , in 1979 from Q N and in 1979 the building was constructed in which the deceased M H practised his handicraft of sawman. In 1981, Malush Hoxha again had to purchase the parcel 586 from H R who was the owner based on documentation. The Purchase Contract (Leg.nr.2866/81) was certified in Municipal Court in Prizren on 24 December 1981 and since then the deceased M H used the property without any obstacles. Former owner of the claimed property, H R, in 1982 has sued several individuals, among them also the deceased M H but later he had withdrawn the lawsuit against M H, and this fact can be confirmed by the Judgment of Prizren Municipal Court C.Nr.388/82 dated 9 December 1982. The respondent motions for the claim to be dismissed as unfounded.
7. According to KPA verification reports of 2012, the Ruling Ac.nr. 290/83 issued by District Court in Prizren on 10 March 1983 and the Ruling no.04/1-313-423 issued by Prizren Municipal Assembly have been positively verified. Regarding the claimed property, parcel 586 was found divided whereby parcel no. 586/1 is registered in the name of M M whereas parcel no. 586/2 is registered in the name of three co-owners (D, M and T R). The update in 2005 concerns the correction of the name of one of the co-owners from D R, which was a technical error, to D R.
8. On 5 September 2012, the Kosovo Property Claims Commission (KPCC), through its decision KPCC/D/A/164/2012, rejected the claim. In the paragraph 94-97 of the cover decision, which according to the certified decision dated 5 September 2012, is applied especially for the claim at hand, it is said that the claimant seeks confirmation of ownership right over the claimed property and in support of her claim she submitted among others the ruling on inheritance of 1998, through which her father inherited the claimed property. However, the respondent alleges that his deceased father purchased the claimed property from the claimant's grandfather and in support of his allegations, he submitted a purchase contract certified in court in 1981. The claimant denied the sale although she did not support her allegations. Based on the testimonies available, the Commission reached the conclusion that the claimed property was sold before the conflict and consequently the claimant failed to demonstrate the ownership right or other property rights for the claimed property immediately before or during the conflict of 1998-1999. Consequently, the claim is rejected.

9. On 19 April 2013, the decision was served on Z M and she filed an appeal before the Supreme Court on 17 May 2013 (hereinafter: the appellant). The respondent received the decision on 23 April 2013 in the capacity of Appellee

Allegations of the appellant

10. Z M alleges that KPCC ascertained facts erroneously and incompletely and wrongfully applied that material and procedural law.
11. According to the appellant, her deceased grandfather, H R was owner of the claimed property and after his death in 1998, after conclusion of the inheritance proceedings in Prizren Municipal Court, her father and his brothers were declared inheritors. According to the reasoning of the KPCC decision, Q H alleges that his father M H purchased the claimed property from H R during 1981 and as evidence, he submitted the purchase contract. The appellant states that she has never seen the said contract and was not informed that this contract exists, what is more she doubts the verity of the purchase contract because her grandfather, H R , was recognized the property right of parcel 586 during court proceedings in Prizren Basic Court, Prizren District Court, as well as the Supreme Court of Kosovo in the period 1985 -1986.
12. The appellant motions the Supreme Court to annul in entirety the challenged decision and to approve her claim, as well as to confirm the property right in the name of her father.
13. As additional evidence in support of the appeal, the appellant submitted:
 - Judgment Ac.nr.515/85, issued by the Supreme Court of Kosovo on 7 January 1986, according to which the respondent's appeal is rejected as unfounded (E G) and the Judgment C.Nr.16/85 dated 21 February 1985 is upheld. Through the challenged judgment, the respondents are obligated to compensate the claimant (H R) the total amount of 1.250.000 dinars for usurpation of the property, respectively parcel 586.
14. The appellee received the appeal on 4 October 2013 and responded to the appeal on 7 October 2013
15. In his response, he reiterates the same allegations he had made before the KPCC emphasising the fact that the appellant's grandfather had withdrawn the lawsuit against M H at the moment when the purchase contract was drafted and certified before the competent court, always referring to the Judgment C.Nr.388/82 dated 9 December 1982.

Legal reasoning:

16. The Supreme Court of Kosovo examined the appealed Judgment pursuant to provisions of Article 194 of LCP, and after evaluation the appeal allegations found that:
17. The appeal is admissible because it was filed within the legal time limit according to the Law no. 03/L-079, which foresees that a party may file an appeal against a Commission decision within thirty (30) days from the day parties are notified of the decision.
18. However, the appeal is unfounded.
19. Although subject of deliberation and evaluation were the appellant's appeal allegations that her father was declared inheritor of the contested property and that the contested property was registered in the cadastral books under his name, the Supreme Court did not find these appeal allegations grounded. This is because according to the contract on sale and purchase of the immovable property certified in the Prizren Municipal Court Leg.Nr.2866/81 on 24 December 1981, the cadastral parcel no.586, a class two meadow with a surface of 00.05.00 ha, was sold by the appellant's grandfather, H R , to M H from village of Dushanovë. This contract is legally valid.
20. Moreover, in the Judgment of Prizren Municipal Court C. Nr. 388/82 dated 9 December 1982 it is ascertained that the claimant H R withdrew his lawsuit against the respondent M H . This Judgment was upheld by the Ruling of the District Court in Prizren Ac.nr. 290/83 on 10 March 1983.
21. Likewise, the Supreme Court also evaluated the appellant's allegations concerning the Judgment of the Kosovo Supreme Court Ac.nr.515/85 dated 7 January 1986 and found that through this Judgment, the Judgment of Prizren District Court C.nr. 16/85 was upheld, based on which it was decided that the respondents (K G , R K , E G and Xh K) have to pay the claimant H R compensation of damages for the cadastral parcel which is subject of this claim. Thus, the appellant had legal possibility to request execution of this judgment.
22. The Supreme Court finds that the appellant failed to demonstrate her property right with legally valid evidence or other rights deriving from the property right. Thus, the court upholds the appealed decision as just, complete, coherent, and lawful.
23. Based on the above and pursuant to Article 13.3 (c) of the Law 03/L-079, the Court decided as in the enacting clause of the 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 remedies.

Sylejman Nuredini, Presiding Judge

Willem Brouwer, EULEX Judge

Rolandus Bruin, EULEX Judge