

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-224/2014

Prishtinë/Priština, 4 May 2016

In the proceedings of:

B.S.

Appellant/Respondent

vs.

R. (N.) P.

Appellee/Claimant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Beshir Islami and Rolandus Bruin, members, deciding on the appeal against the decisions of the Kosovo Property Claims Commission KPCC/D/A/235/2014 (case file registered at the KPA under the number KPA14871), dated 30 April 2014, after deliberation held on 4 May 2016, issues the following

JUDGMENT

1. **The appeal of B.S. against the decision of the Kosovo Property Claims Commission KPCC/D/A/235/2014 dated 30 April 2014, with regard to the Claim registered with the KPA under No. KPA14871 is rejected as unfounded.**
2. **The Decision of the Kosovo Property Claims Commission No. KPCC/D/A/235/2014 dated 30 April 2014, is confirmed as far as it concerns the Claim registered with the KPA under No. KPA14871.**

Procedural and factual background:

1. On 11 December 2006, R. P. (henceforth: the Appellee) filed a claim with the Kosovo Property Agency (henceforth: the KPA) seeking ownership rights and repossession over a parcel no. 452, in surface of 51 Ar 44 m², registered in the Possession List no. 60, Cadastral Zone of Mazgit/Mazgit, Municipality of Obiliq/Obilić (henceforth: the claimed property). He alleged that the property is being used by S. family without any legal rights.
2. In order to support his allegation, the Appellee among others also provided the following documents:
 - Possession List no. 60 dated 6 September 2004 issued by the Cadaster and Immovable Property Institute of Prishtina/Pristina which proves that cadastral parcel 452 in surface of 51 Ar 44 square meters is registered under the name of N. P., Appellee's father;
 - ID card issued by the Authorities in Obiliq/Obilic on 2 June 1997, with a residential address in Mazgit village;
 - On 27 December 2013, in response to the Appellant's – at that time Respondent's claim, I. I. S. submitted the Ruling on inheritance O.br.238/2010, dated 24 November 2010 of the Municipal Court of Prishtinë/Pristina, which proves that the Appellee was declared owner of the 1/1 of the parcel the claimed property ;
 - Certificate of ownership P-72614046-000452-0 which proves that the Appellee is registered as owner at the respective Cadastral Office;
 - Copy of the Plan dated 24 December 2010.
3. According to the Consolidated Verification Report dated 12 December 2013, the KPA has positively verified to possession list and certificate for immovable property rights submitted by the Appellee.

4. On 25 September 2007, 30 August 2010 and 19 March 2014, the KPA notified the claim and published it on the KPA Notification Gazette no.7 stating that the last notification on 19 March 2014 was correct based on GPS coordinates.
5. On 11 October 2013, B. S. (hereinafter: the Appellant) responded to the Claim and stated that the property was bought by his late father I.S. where a portion of the purchase price was paid, but the seller did not come to take the remaining amount of the money and to transfer the property to the buyer. Meanwhile, the contracting parties died and the Appellant's efforts to fulfill the contract had been futile as the family members of the deceased refused to do so. In order to support his claim, the Respondent submitted the following documents:
 - a pre-contract signed between N.P., Appellee's father, and I. S., Appellant's father. The object of the contract was an immovable property in Mazgit/Mazgit village in surface of 70 Ar, culture house, yard and field without specifying the number of parcels, with the sale price of 50,000 DM (fifty thousand Deutsche Marks),
 - a declaration of I. S. stating that de buyer paid the amount of 9000 DM to the seller on the day of signing the contract and remaining amount of 41,000 DM should be paid on 31 December 2000;
 - the list of the serial numbers of the banknotes handed over and received by the parties with their signatures;
 - notes on communication between the parties by telephone (handwritten by the Appellant).
6. On 22 February 2008, the Kosovo Property Claims Commission (KPCC) by its decision KPCC/D/A/8/2008, found that N. P., the Appellee's father, proved that he is the owner of 1/1 of the parcel 452, and decided that the Appellant was given back possession and that other persons were ordered to vacate the property within 30 days under the threat of forcible execution.
7. By its Resolution KPCC/RES/15/10 dated 16 February 2010, the KPCC quashed its decision and returned the case for reconsideration due to wrong notification.
8. By its decision KPCC/D/A/235/2014 dated 30 April 2014, the KPCC found that the Appellee proved that he is the owner of 1/1 of the cadastral parcel 452, and decided that the Appellee was given back possession and that other persons were ordered to vacate the property within 30 days under the threat of forcible execution
9. In paragraphs 78-80 of the Cover decision, the KPCC reasons that the Appellee has proved that he is the owner based on the decision on inheritance of 2010, whereas the Appellant filed a pre-contract which does not specify the claimed property, and which was denied by the Appellee. The KPCC has concluded that the Appellant did not present a valid defense and that the claim had to be approved.

10. The decision of the KPCC was delivered to the ClaimantAppellee on 22 September 2014, whereas to the Appellant on 11 September 2014. On 26 September 2014, the Appellant appealed against the decision before the KPA Appeals Panel of the Supreme Court. The appeal is addressed to the Special Chamber of the Supreme Court of Kosovo, but as it is filed against the decision of the KPCC it is clearly intended to be filed at the Appeals Panel. The appeal was served to the Appellee on 4 November 2014, whereas on 24 November 2014 the Appellee filed a response to the appeal. The Supreme Court received the case file on 30 October 2014.

Allegations of the parties:

Appellant:

11. The appeal was addressed to the Special Chamber of the Supreme Court, but from the content and the object of the appeal it is obvious that the party intended to address the Appeals Panel. The Appellant alleges that the KPCC decision contains an essential error, respectively misapplication of the procedural law and is based on an erroneous and incomplete evaluation of the factual situation.
12. The Appellant claims that the issue was resolved once by the Housing and Property Claims Commission by decision HPCC/D/204/2005/C dated 18 June 2005 upon the claim DS 302 426 where the claim was rejected and the case was referred to the competent local court.
13. In the proceedings before the KPA/KPCC, the Appellant alleged to have entered a transaction with the owner at that time and that they had concluded a pre-contract and that he had paid a part of the agreed price. Nonfulfillment of the contract as claimed by the Appellant occurred because the Sollova family had lost contact with the P. family, and even despite the efforts they were not able to finalize the transaction.

Appellee:

14. The Appellee denies, apart from the allegation that is uncertain who is the Appellant, as different persons appear in the appeal proceedings, that the property was sold, and claims that after the Decision on inheritance O.No.230/2010 and 328/2010 he is the owner of the claimed property.

15. The allegations regarding existence of the pre-contract do not stand as no pre-contract can be valid for 13 years if it is not formalized by a regular contract. Therefore, he considers this as Appellant's attempt to delay proceedings and not an argumentative defense.

Legal reasoning

16. The appeal was timely filed within 30 days as required by section 12.1 of UNMIK Regulation 2006/50 on the Resolution of Claims Relating to private immovable property, including agricultural and commercial property as amended by the Law no. 03 / L-079 (*henceforth: Law no. 03 / L-079*), and is admissible.
17. The KPCC based its decision on the fact that the Executive Secretariat of the KPA among the documents submitted by the Appellee, positively verified the Certificate for the immovable property rights of 2010. This Certificate indicates that the claimed property is registered under the name of the Appellee. The KPCC further refers to the final Ruling on inheritance of the Municipal Court of Prishtinë/Priština O.Br.230/2010 declaring the Appellee as the owner.
18. The Supreme Court finds that the appealed decision is also based on the fact that the Appellant has not submitted any contract on sale which would serve as a basis in support of his allegation, that the Appellant had purchased the claimed property. In fact the Court also found that the Appellant's father in that sale of the claimed property has not acted in compliance with the requirements prescribed in Article 4, paragraph 2 of the Law on Transfer of Immovable Property (OG RS no. 42 dated 18 November, 1998) which, as applicable at the time of the alleged sale, required the existence of a contract on sale of the immovable property in writing with the signatures of the parties verified by the Court.
19. The Court finds the conclusion of the KPCC Decision as correct and lawful. The Appellee proved that he is the owner based on the decision on inheritance of 2010, whereas the Appellant has not presented a valid defense and for these reasons the claim had to be approved. Therefore, the Supreme Court considers the appeal allegations as unfounded with regard to the property rights over the claimed property.
20. From the review of the case file submitted to the KPA/KPCC and the appeal, the Court notes that the Appellant refers to a case adjudicated by the Housing and Property Claims Commission by decision HPCC/D/204/2005/C, dated 18 June 2005, upon the claim DS 302 426, by which the claim in that case was rejected and the case was dismissed and referred to the competent local court.

21. The Court found that HPCC/D/204/2005/C, dated 18 June 2005, upon the claim DS 302 426 451 refers to another cadastral parcel, No. 451, with surface of 0.21.51 ha involving a residential property – a house and outhouses, whereas in the concrete case the claimed property is cadastral parcel 452 with a culture field of category II. This means that that HPCC decision is not referring to the same property. The decision on that claim cannot, other than the Appellant states in appeal, be regarded to constitute a res judicata on the same claim.
22. Consequently, the Appellant did not prove any ownership rights over the claimed property, and as well did not successfully challenge KPCC’s conclusion in the KPCC decision that the Appellee is the owner of the claimed property.
23. The Supreme Court finds that the KPCC is a fair and valid decision and is based on a proper and complete establishment of the factual situation. It is as well based on a correct application of the substantive law. Therefore, The Supreme Court concludes that the appeal is unfounded.
24. Based on the above and in compliance with section 13.3 (c) of Law No. 03/L-079, it is decided as in the enacting clause of this judgment.

Legal Advice

Pursuant to Section 13.6 of the 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.

Sylejman Nuredini, Judge

Beshir Islami, Judge

Rolandus Bruin, EULEX Judge

Sandra Gudaityte, EULEX Registrar

