

**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-156/13

**Prishtinë/Priština,
16 April 2014**

In the proceedings of:

Z S

D O 43

K, S

Claimant/Appellant

Vs.

Sh Sh

Zh V /V

K

Respondent 1/Appellee

M B

Respondent 2/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Esma Erterzi, Presiding Judge, Willem Brouwer and Erdogan Haxibeqiri Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPPC/D/A/156/2012 (case file registered at the KPA under the number KPA32049), dated 6 June 2012, after deliberation held on 16 April 2014, issues the following:

JUDGMENT

1. The appeal of the claimant against the decision of the Kosovo Property Claims Commission KPPC/D/A/156/2012, dated 6 June 2012, is partly accepted.
2. The decision of Kosovo Property Claims Commission KPPC/D/A/156/2012, dated 6 June 2012 regarding the claim registered at the KPA under the number KPA32049, is annulled due to the lack of jurisdiction.
3. The claim of the claimant is dismissed as inadmissible as it regards the claim registered at KPA32049.

Procedural and factual background:

1. On 19 March 2007, the Claimant Z S , initially as a member of the family household, filed a claim asking for the repossession of the cadastral parcel no 637, in the place called Tankosic Ferizaj/Urosevac and compensation for the usage without prior consent of the claimant. Together with the claim, he provided the copy of the possession list no 421, issued by the Republic Geodesy Office Centre for Immovable Property, Cadastre of the Municipality of Ferizaj/Urosevac, on 5 August 2005 indicating the name of the possessor of the cadastral parcel nr 637 as S (M) S .
2. On 24 September 2007, the claimant submitted the inheritance decision issued by the Municipal Court in Krugejevac on 3 August 2000 indicating the inheritor of the late S S as K S ć which was amended with a subsequent Decision of the same Court on 21 September 2007 including the claimant Z S as the inheritor.
3. The documents submitted by the claimant are verified by the KPA.
4. On 18 June 2007, first Respondent Sh Sh approached the KPA and claimed a legal right; however he refused to sign the notification to the proceedings. He submitted:
 - Copy of the informal contract dated 25 February 1981 concluded between the claimant and the first Respondent on a purchasing of a house;
 - Purchase contract dated 7 May 1981, certified in the Municipal Court in Ferizaj (OV. Br.940/81) covering the cadastral parcel numbers 648, 783, 784, 785, 787, 789, 790, 791, 1721 and 1722.
 - Possession list no 279 dated 25 June 2007 listing the above mentioned parcels under the name of the Municipal Assembly of Ferizaj as the property right holder.
 - A written statement in which the first respondent asserted that he purchased the cadastral parcel numbers 649 and 782 from the claimant in 1981 and has been in

their possession since then; however, the cadastral records has been changed in accordance with the purchase contract.

5. On 21 June 2011, the second Respondent M B filed a notice of participation and claimed a property right over the disputed parcel number 637.
6. On 6 June 2012, the KPCC refused the claim considering that the cadastral parcel 637 was sold to the second respondent before the conflict.
7. On 10 April 2013, the Decision of the KPCC was served on the claimant. He filed an appeal on 9 May 2013.
8. The appeal was served on both of the respondents on 23 September 2013. They did not file a response to the appeal.

Allegations of the parties

Claimant/Appellant

9. The claimant alleges that his father was the owner of the cadastral parcel 637. He claims that he lost the possession of it due to the conditions driving from the armed conflict. While admitting that his father sold some of the lands that belong to him, he denies the sales of this cadastral parcel to any of the respondents.

Respondent 1

10. The first respondent Sh Sh alleged ownership right over the property in dispute based on a sales contract. He claims that he has been in possession of the land since 1981.

Respondent 2

11. The second respondent M B also asserted that his deceased father D B bought the land in 1979. He alleged that since then he has been cultivating this land. He confirms that he does not have any document to show the conclusion of a purchase contract other than the ones submitted.

Legal reasoning:

Admissibility of the appeal

12. The appeal has been filed within 30 days as foreseen by law (Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079). The Supreme Court has jurisdiction over the appeal against the decision of the KPCC. The appeal is admissible.

Merits of the appeal

Jurisdiction of the KPCC

13. According to Article 3.1 of the Law 03/L-079, 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. The claimant provides a document showing his father's title over the property as well as inheritance decision. This fact is not contested by any of the respondents because both respondents ground their claim on alleged sales concluded with the property right holder which could not be registered under conditions of that time. However, the allegation of the claimant on the possession before the conflict is challenged by both respondents. Each of them claims to have the possession of the land before the conflict dating back to 1979 and 1980.
15. The Supreme Court, likewise KPCC, notes that the documents provided by the first respondent are not related to the land in dispute. None of them covers the cadastral parcel no 637.
16. While trying to prove the alleged sale via documents other than a purchase contract, the second respondent also relies on the witnesses' statements for the existence of the sales and the possession of the land. Considering that the KPCC established through witness statements heard in a hearing that the second respondent was in possession of the land since 1980s, whether the KPCC had jurisdiction to discuss the merits of the claims of both parties is at stake. This is to be examined by the Supreme Court *ex officio*.
17. The documents provided by the second respondent are considered as *prima facie* evidence by the KPCC in terms of the alleged sales contract between him and the property right holder. He also produced the payment receipts and handwritten notebook dating back to 1980s, as the KPCC stands, showing that these receipts indeed relate to the purchase of the claimed property. Thus, the KPCC, as it puts, is satisfied that the claimed property was sold to the Second Respondent before the 1998-99 conflict and consequently concludes that the claim is to be refused.
18. If the Commission is satisfied with the documents produced by the second respondent to prove the alleged sales in 1980s, then it should have dismissed the claim due to the lack of jurisdiction as the dispute did not derive from the conditions related to the armed conflict. As the Commission stands, on the one hand, it maintains the claimed property had been sold to the second respondent before the conflict, on the other hand, yet it assumes jurisdiction to decide

on the merits of the claim. This interpretation and standing of the KPCC cannot be upheld by the Supreme Court.

19. Regardless of whether the documents that were considered as *prima facie* evidence by the Commission is sufficient to prove the alleged sales or whether they can serve as a valid purchase contract meeting the requirements set forth by Article 4 of the Law on Transfer of the Immovable Properties (Official Gazette of RS no. 43/81), the dispute deriving from an alleged sales concluded in 1981 and possession based on it is not within the jurisdiction of the KPCC.
20. The claimant failed to show that the loss of the possession of the property derived from the conditions related to the armed conflict. Thus, the dispute among the parties is a matter falling under the competence of ordinary courts which exceeds the specific jurisdiction and the competence of the KPCC.
21. The appeal of the claimant is, therefore, partly grounded as the KPCC decided which did not fall under its jurisdiction. The further arguments of the parties cannot be examined by the Supreme Court as they are not within its jurisdiction under these proceedings. Accordingly, the decision of the KPCC is annulled and the claim is to be dismissed pursuant to Section 13.3 (a) of the UNMIK Regulation No 2006/50, as amended by Law No 03/L-079.
22. This judgment is without prejudice of the parties to pursue their rights, if exist, before the competent courts.

Legal Advice

23. Pursuant to Section 13.6 of Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Esma Erterzi, EULEX Presiding Judge

Erdogan Haxhibeqiri, Judge

Willem Brouwer, EULEX Judge

Urs Nufer, EULEX Registrar