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-50/14

Prishtinë/Priština,
20 July 2016

In the proceedings of:

M.N. ,
Nabërgjan
Pejë/Peć

Appellant

V s.

I.L. ,
Slavko Kruniq 16
Koriqan
Kragujevac,Serbia
Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of judges: Sylejman Nuredini, as Presiding Judge, Anna Bednarek and Krassimir Mazgalov, Judges, on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/C/100/2011 (case file registered at the KPA under the number 36252) dated 23 February 2011, after the deliberation held on 20 Kuly 2016, issues the following:

JUDGMENT

The Appeal of M.N. filed against the Decision of the Kosovo Property Claims Commission KPCC/D/C/100/2011, case registered at the KPA under the number KPA36252, dated 23 February 2016, is dismissed as inadmissible.

Procedural and factual background:

1. On 27 April 2007, I.L. filed a Claim with the Kosovo Property Agency (the KPA) seeking re-possession of the parcel No 566/1 in the surface of 0.27.98 Ha located in Brestovik, Municipality of Pejë/Peć. He alleges that the property belongs to him, but it is occupied by unknown persons and that he lost possession as a result of circumstances of 1998-1999 and indicated 20 July 1999 as the date of the loss.
2. To support his Claim, he presented the following documents to the KPA:
    - The Certificate of immovable property rights UL-71611010-00102 dated 1.7.2010, issued by the Cadastral Office of the Municipality of Pejë/Peć. The certificate indicates that the cadastral parcel number 566/1 located in the place called "Kosaç" in the surface of 2798 m2 is registered under Claimant's name in the capacity of the owner.
    - The Judgment of the Municipal Court of Pejë/Peć C.No 697/07 dated 4 February 2008, confirming the Appellant's property right over the cadastral parcel which is subject of the Claim.
    - By the Judgment of the District Court of Pejë/Peć Ac.No201/2008 dated 22.6.2009, the Judgment of the Municipal Court of Pejë/Peć C.No 697/07 dated 4 February 2008, was quashed.
    - The Power of Attorney Vr.nr.1828/1 dated 8 February 2007 indicating that the Claimant authorized U.B. from Pejë/Peć to undertake legal actions in order to prepare the cadastral parcel which is subject of the Claim.
    - The Claimant's Power of Attorney Vr.nr.1828/1 dated 28 May 2007, confirmed by the Administration of the local self-governance of Kragujevc city, indicating

that the authorized person U.B. may sell and transfer the property which is subject of the Claim to the buyer.

- The contract dated 11.5.2007 Vr.nr.7443/07 confirmed by the Municipal Court of Belgrade indicating that the seller L.I. sold the cadastral parcel which is subject of the Claim to U.B.
- By the Judgment of the Municipal Court of Pejë/Peć P.nr.245/08 dated 19.5.2008, the defendant U.B. was found guilty because he modified the Power of Attorney No 1282 dated 8.2.2007 by adding the sentence "that the same among others may sell and transfer the Claimant's land" by which he committed the criminal offense of falsifying documents pursuant to Article 332 par. 2 of the PCCK.
- By the Appellant's submission dated 22.1.2008 addressed to the Municipal Court of Pejë/Pejć, he withdrew the lawsuit against U.B. as the same had returned the money by which he bought the property which is subject of the Claim.
- By the Ruling of the Municipal Court of Pejë/Peć C.nr.460/09 dated 21.2.2012 it is found that the Appellant withdrew the lawsuit filed on 9.8.2009 against I.L. and U.B. from Peja/Peć.

3. The claimed property registered as per the claim KPA36252 was notified on 5 June 2008 and 30 August 2010, where it was found to be not occupied.
4. The4 KPA Verification Team positively verified the Certificate of immovable property rights dated 1.7.2010.
5. The Kosovo Property Claims Commission (the KPCC) by its Decision KKPK/D/C/100/2011 dated 23 February 2011, recognized the Claimant's property rights over the cadastral parcel 566/1 in the surface of 0.27.98 ha located in the cadastral zone "Brestovik", municipality of Pejë/Peć. In the reasoning of this Decision, in paragraph 11 it is concluded that based on established facts and the evidence it is confirmed without any doubts that the Claimant has property rights over the immovable property which is subject of the Claim. Also, the Certificate of immovable property rights dated 1.7.2010 issued by the Cadastral Office in Peja/Peć, indicates that the Claimant is registered as the owner of the immovable property. This Certificate, as

well as the other evidence were verified by the Executive Secretariat and are considered valid and relevant.

6. On 15.7.2011, the KPCC's Decision KKPK/D/C/100/2011 dated 23 February 2011 was served on the Claimant.
7. On 6.11.2013, M.N. filed an Appeal against this Decision.
8. Whereas, the Appellee filed a response to the Appeal on 11 April 2014.
9. In his Appeal he alleged that the appealed Decision was rendered based on erroneous and incomplete determination of the factual situation and on erroneous application of the material law, and requested the Commission to modify the Decision by acquitting him from liability. Furthermore, he stated that he believed that U.B. was in contact with the Claimant regarding his Power of Attorney to sell the cadastral parcel which is subject of the Claim and therefore, he believed that he had bought the property as a result of a correct agreement, where he gave the money in the amount of 13.500 € to U.B. in order to deliver it to the Claimant.
10. The Appellant added that he had heard that the Claimant's – I.L. sisters had claims over the property which is subject of the Claim and for these reasons he filed a lawsuit before the Municipal Court to register the parcel which is subject of this Claim under his name.
11. The Claimant responded to the Appellant's Appeal stating that he has not authorized anyone to sell the said property on his behalf. The Power of Attorney dated 8.2.2007 was falsified by U.B. for which the same was found guilty with the Judgment of the Municipal Court of Pejë/Peć P.nr.245/2008 dated 13.5.2008. The Appellee further states that the Appellant did not participate in the proceedings of the first instance court, therefore his Appeal should be dismissed as inadmissible.

Legal reasoning:

The inadmissibility of the Appeal

12. The Appeal is inadmissible (Section 13.3 (b) of UNMIK Regulation 2006/50 as amended by Law No 03/L-079) as the Appellant did not participate in the first instance proceedings.

13. Pursuant to 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 Law No 03/L-079 (hereinafter the Law No 03/L-079), a party may submit an Appeal within thirty (30) days of the notification to the parties by the Kosovo Property Agency of a decision of the Commission on a claim. Also, pursuant to the provision of Article 176 par 1 and 177 par 1 of LCP it is foreseen that the right to submit an Appeal is the exclusive right of the parties to the first instance proceedings.
14. Therefore, pursuant to Section 10.1 (Section 10.2 of UNMIK Regulation 2006/50 as amended by Law No 03/L-079) it is foreseen that a party to the claim and the related proceedings is "any person, other than the claimant, who is currently exercising or purporting to have rights to the property which is the subject of the claim or any other person who may have a legal interest in the claimed property subject of the claim […], provided that such person informs the Executive Secretariat of his or her intention to participate in the administrative proceedings within thirty (30) days of being notified of the claim by the Executive Secretariat.)
15. It is not disputed that the Appellant was not a party and did not participate in the first instance proceedings before the KPCC. The Appellant did not offer correct, thorough and legally valid explanations and clarifications for justifiable reasons restricting or disabling him to participate in these proceedings in order for him to be accepted as a party to these proceedings. Moreover, according to his law suit the Municipal Court in Pejë/Peć has issued a Judgment C.nr.697/07 dated 04 February 2008, which was annulled by the District Court with the Judgment Ac.nr.201/2008 dated 22 June 2009. Then the Appellant withdrew the law suit, and the Municipal Court in Pejë/Peć with the Ruling C.nr.460 dated 21 February 2012 concluded that the Appeal was withdrawn.
16. The Court observes that the notification was done properly. The KPA Team placed the notification sign in three languages – Albanian, Serbian and English – on the immovable property which is the subject of the Claim.
17. The Appellant did not offer any legally valid explanations and clarifications for justifiable reasons to inform the KPA of his intention to participate in these proceedings, which he was obliged to do. Moreover, the Appellant submitted an

Appeal two years after the appealed Decision was issued. Since he gives no justification why he did not participate in the proceedings in the first instance before the KPA, this failure goes in his detriment.

18. Since the Appeal is inadmissible, the Supreme Court is not entitled to decide on the merits of the Appeal, namely the Decision.
19. Also, the Appellant lacks legal-material legitimacy to act in the capacity of a party in this contested legal matter under Article 77 par. 3 of LCP, as himself and the Claimant, according to the case files (the falsified Power of Attorney, dated 8.2.2007 No 1282, the pre-contract dated 11.5.2007 and the contract dated 11.05 2007) it results that they are not participants and not even obligational right holder of this civil-legal rapport.
20. The pre-contract dated 7.2.2007 and the contract dated 11 May 2007 concluded between the Appellee, in the capacity of the seller and U.B., in the capacity of the buyer, does not result to be verified by the competent court and the fact that the mentioned Power of Attorney turns out to be falsified according to the Judgment of the Municipal Court in Pejë/PećP.nr.245/08 dated 19.5.2008 indicates undoubtedly and certainly that the Appellant's Appeal allegations are unacceptable, unfounded and even in contradiction with the provisions of Article 4 par. 2 of the Law on Circulation of Immovable Property "Official Gazette of RS. No.43/81, 24/85, 6/89, 30/89 and 40/89". Pursuant to these legal provisions the written form and signatures of the contracting parties shall be verified by the court, which represent the constitutive elements, without which those legal actions are legally invalid.

21. Based on the reasons mentioned above it undoubtedly results that not only the Appellant failed to inform the Executive Secretariat about his intention to participate in the administrative proceedings within 30 days from the day of notification on the Claim by the Executive Secretariat, pursuant to Section 10.2 of UNMIK Regulation 2006/50 as amended by the Law No 03/L-079, but also, the Appellant lacks legal-material legitimacy to act in the capacity of a party in this contested legal matter under Article 77 par. 3 of LCP, as the Appellee and the Appellant are not participants and not even obligational right holders of this civil-legal rapport.

22. Therefore, the Claim has to be dismissed as inadmissible (Section 13.3 (b) the UNMIK Regulation 2006/50 as amended by the Law No 03/L-079 and the Article 195.1 sub-paragraph (a) of the Law on Contested procedure).

Legal advice

23. 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.

Sylejman Nuredini, Presiding Judge,

Anna Bednarek, EULEX Judge

Krassimir Mazgalov, EULEX Judge

Sandra Gudaityte, EULEX Registrar