

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-049/13

Prishtinë/Priština

26 March 2015

In the proceedings of:

R B

S/S R

Appellant

Vs.

T P

P J 25

K

S

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Esma Erterzi and Willem Brouwer Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/60/2010 dated 22 February 2010 (case file registered at the KPA under No. 40424), after deliberation held on 26 March 2015, issues the following:

JUDGMENT

1. **The appeal of R B against the decision of the Kosovo Property Claim Commission KPPC/D/A/60/2010 (as much as it regards the case file registered at the KPA under no. KPA40424) dated 22 February 2010, is dismissed as inadmissible because the Appellant did not take part in the proceedings in the first instance.**

Procedural and factual background

1. On 20 August 2007, T P (hereinafter: the Appellee) filed a claim with the Kosovo Property Agency (KPA), alleging that he is the owner of the claimed property and that he seeks confirmation of his ownership right, re-possession and compensation in relation to the parcel no. 2746 in a surface of 40 are and 7m² located in Shirokë, Suharekë/Suva Reka, Cadastral Zone Suharekë/Suva Reka (hereinafter: the Property). The Appellee states that he has lost the possession over the property on 11 June 1999 and that the property has been occupied by an unknown person.
2. In support of his claim he submitted the following documents with the KPA:
 - Possession list no. 84 dated 24 July 2006, issued by the Department for Cadaster, Geodesy and Property of the Municipality of Suharekë/Suva Reka in which it is established that the claimed parcel is located in the place called “Shirokë”, Cadastral Zone of Suharekë/Suva Reka, Municipality of Suharekë/Suva Reka and is registered in the name of T P;
 - Copy of plan nr. 953-2/2001-301, dated 7 November 2001 issued by the Department for Cadaster, Geodesy and Property of the Municipality of Suharekë/Suva Reka;
 - National identification document issued on 1 April 2002.

The aforementioned documents have been positively verified by the KPA Verification Unit; In the course of the KPA reviewing process the Appellee additionally submitted the following documents:

- Background on the parcel issued by the Immovable Property Office in Prishtina, which establishes that parcel 2746 has been registered as per the possession list nr. 84 in the name of T P and that no other changes have been registered for this property;

- Certificate on the rights of the immovable property nr.P-72116046-02746-0 dated 29 October 2012, issued by the Municipal Cadastral Office of Suharekë/Suva Reka, in which it is established that the claimed parcel has been registered in the name of the Claimant;
 - Inheritance decision no.36/2002 dated 27 May 2002 issued by the Municipal Court of Suharekë/Suva Reka;
- and other documents that are not relevant for the decision-taking.

3. According to the notification report dated 27 July 2009, the Notification Team has made the verification of the location of the property and placed the notification on that land. The verification of the property was done based on the cadastral plan and it resulted to be a cultivated agricultural land. In the notification report it is mentioned that from the contacts the Notification Team had with the neighbors in the property, it was learned that the property was occupied by R B. Attempts were made to contact him but these attempts were unsuccessful because the people in that area were not cooperative.
4. No Respondent or any interested party appeared before the Executive Secretariat to challenge the claim before the expiration of the 30-day deadline.
5. The Kosovo Property Claim Commission (KPCC) with regards to the claimed parcel, with its decision KPCC/D/A/60/2010 dated 22 February 2010 which refers to the case registered with the KPA under the number KPA40424, decided to confirm the ownership right of the Claimant because he has presented sufficient evidence to establish that he is the owner of the claimed property and that he has the right of possession over that property.
6. The decision was served on the Appellee on 3 March 2011. On 7 April 2011, Appellant submits to the KPA a claim for the administration of the property.
7. The KPA in its decision, dated 3 August 2011, decided to place the property under administration by the KPA.

8. On 11 January 2013 the KPA issues an eviction order for the occupant of the stated property.
9. The decision was served on the Appellant on 24 January 2013.
10. On 25 January 2013 the Appellant filed an appeal against the KPCC decision.
11. With his appeal the Appellant submitted the copies of the following documents as evidence:
 - Certificate no.952-20/2013, dated 21 January 2013 on the background of the parcels no.1357 and no.2746 issued by the Department of Legal and Property Services, which confirms that parcel 2749 is in the name of T P (Appellee's mother).
 - Contract no.224/62, dated 1 November 1961 on the purchase of the parcel no.1357 concluded between T P (Appellee's mother) and R B (Appellant's father) which was verified by the Court.
 - Etc.

The Appellant has also submitted a number of other documents which are irrelevant for this case.

Allegations of the parties

12. The Appellant challenges the KPCC decision on the grounds that the Decision was taken under the conditions of erroneous and incomplete determination of the factual situation and misapplication of the material right. In his appeal the Appellant alleges that the KPCC has exceeded its competences when it decided on the claim because the claim filed by the Claimant with the KPA is disputable given that there are proceedings underway in the court for confirmation of ownership for the stated property which has been initiated by the Appellant, R B. The Appellant adds that the claim filed with the KPA is not related to the circumstances of the armed conflict. As much as it concerns the property which is subject of the dispute, the Appellant explains that the stated property is parcel no.1375, the number of which has changed into 2746 as a result of the changes made after the aerial photographing and that he is under its possession since 1961 when he acquired the

ownership over it through a sales contract entered between T P (Appellee's mother) and R B (Appellant's father).

13. The Appellee, in his response to the appeal alleges that the appeal of the Appellant does not stand because of the fact that the Appellant was not a party in the proceedings in the first instance and because the parcel claimed by him is not the same parcel with the parcel which is subject of the dispute. The appeal refers to parcel 1357 whereas subject of the dispute is parcel no. 2746.

Legal reasoning

Admissibility of the appeal

14. The appeal of R B, is inadmissible because he was not a party in the procedure in the first instance before the KPCC.
15. The Supreme Court has jurisdiction to review the appeal.
16. According to Article 12.1 of the Law no. 03/L-079, a party may file an appeal within thirty (30) days from the notification to the parties by the Kosovo Property Agency about the decision of the Property Claims Commission.
17. Article 10.1 of the Law 03/L-079 provides that upon receipt of a claim, the Executive Secretariat shall notify and send a copy of the claim to 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. Article 10.2 of the same law provides that “*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 shall be a party to 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 [...]*”.

18. Only a party in the proceedings in the first instance has the right to file an appeal against the KPCC decision. According to the jurisdiction of the KPA Appeal's Panel of the Supreme Court, the only exception from this rule occurs if and when the person who may purport a right over the disputed property was not aware of the claim filed with the KPA because he/she was not properly informed and therefore he/she was not able to file the notification for participation.
19. In the concrete case, the Supreme Court notes that based on the abovementioned facts, the Appellant had all possibilities to become aware of the proceedings being developed in the first instance given that the notification was done properly by placing the respective signs on the stated parcel. Given that the Appellant was in possession of and was using the stated parcel he has easily seen the notification. Nevertheless he did not take part in the proceedings in the first instance to express his legal interest. Furthermore, after a KPCC decision the property has been placed under KPA administration and for this the respective notifications were placed. Again, the Appellant has not shown any interest by appearing in front of the KPA. In addition to that, in his appeal he did not give any reason why he did not take part in the proceedings in the first instance.
20. The Supreme Court deems it necessary to clarify the fact that even if the Appellant would have been a party in the first instance, the appeal is inadmissible because in his appeal he claims the ownership over the parcel no.1357, namely, he requests the recognition of his ownership right over a different parcel. As much as it concerns his allegations that the number of the parcel has changed as a result of the changes made in the cadastral books after the aerial photographing, he did not provide any valid documents to prove this allegation. On the other hand, the Appellee has submitted a Certificate no.952-20/2013, dated 21 January 2013 issued by the Cadastral Office for Immovable Properties of Prishtina in Krusevac, which confirms that after the aerial photographing of 1959, no changes were made in the cadastral register in relation to parcel nr.2746. This document confirms that the number of the parcel did not change and that the allegation of the Appellant does not stand. In order to confirm the abovementioned the Appellee has presented a Certificate on the Rights of the Immovable Property no. P-72116046-02746-0 dated 29 October 2012, issued by the

Municipal Cadastral Office of Suharekë/Suva Reka, in which it is established that the claimed parcel has been registered in the name of the Appellee.

21. Furthermore, given that the subject of the dispute is parcel nr.2746, the Appellant in his appeal may not claim more than what was requested in the proceedings in which the Decision which is subject of the appeal was taken and he also may not change the subject of the claim, because in accordance with article 258, parag.1 of the LCP the change of the claim is forbidden after the conclusion of the preparatory hearing or the main trial.
22. Under these conditions, given that the appeal is inadmissible, the Supreme Court does not have to decide on the merits of the appeal.

Conclusion

23. Based on the abovementioned facts and reasoning the appeal is dismissed as inadmissible pursuant to Article 13.3 (b) of the Law no. 03/L-079 and Article 195 par.1, sub-par (a) of the Law on Contested Procedure. Therefore, the Panel decided as in the enacting clause of this Judgment.

Legal Advice

24. Pursuant to Section 13.6 of the Law no. 03/L-079 this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Esma Erterzi, EULEX Judge

Willem Brouwer, EULEX Judge

Urs Nufer, EULEX Registrar