

SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA

KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË AKP-së
ŽALBENO VEÇE KAI

GSK-KPA-A-043/14

Prishtinë/Priština,
4 December 2014

In the proceedings of:

D. J.

Serbia

Appellant

vs.

N.A

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Willem Brouwer, Presiding Judge, Esma Erterzi and Sylejman Nuredini , Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/204/2013 (case file registered at the KPA under the number KPA26525), dated 11 June 2013, after deliberation held on 4 December 2014, issues the following

JUDGMENT

1. The appeal of D. J. against the decision of the Kosovo Property Claims Commission KPCC/D/A/204/2013 (case file registered at the KPA under the number KPA26525), dated 11 June 2013, is rejected as ungrounded.
2. The decision of the Kosovo Property Claims Commission KPCC/D/A/204/2013 as far as it is regarding the claim registered at the KPA under KPA26525, dated 11 June 2013, is confirmed.

Procedural and factual background:

1. On 14 March 2007, D. J. (henceforth: the Claimant), filed a claim with the Kosovo Property Agency (KPA), seeking repossession of the property situated in Municipality of Vitia/Vitina, Cadastral Zone of Germovë/Grmovo, parcel No 72/2, cultivated land with a total surface of 03.49.00 ha. The Claimant stated that the possession over the claimed property was lost on 12 June 1999 due to the armed conflict in 1998/1999 and it is illegally usurped by unknown persons, hence, beside repossession he seeks compensation for the use of the property without his consent.
2. To support his claim he provided the KPA with the following documents:
 - The Copy of Plan dated on 21 November 1996 issued by Municipal Assembly of Viti/Vitina, Cadastral Zone Gërmovë/Grmovo showing the claimed property registered as Socially Owned Property under the name of Agricultural Compound "Morava".
 - The Final Judgment P.Br.181/96 dated 06 January 1997, issued by Municipal Court of Vitia/Vitina whereby is established that Agricultural Compound "Agromorava" is obliged to recognize the ownership right and possession, as well as to allow the transfer of the ownership right of the claimed property on the name of S. J. (the Claimants mother) within 15 days since the date of receipt of the Judgment under the threat of enforced execution. This transfer to be carried out by the Office for Cadaster of Vitia/Vitina.
 - A death Certificate 203-1-46/99 dated 15 March 1999 issued by Civil Registry office of the Municipality of Vrnjačka Banja showing that S. J. passed away on 13 March 1999.

- The Ruling on Inheritance, O.Br.139/99 dated 19 July 1999, issued by the Municipal Court of Jagodina. According to this Ruling the Claimant and his brother inherited the claimed property from their deceased mother, each of them an ideal part of 1/2.
3. On 8 February 2008, the KPA notified the claim by putting up a sign at the place where the parcel was allegedly located indicating that the property was subject to a claim and that interested parties should file their response within 30 days. No one responded to this notification. On 30 August 2010, KPA again notified the claim by publishing it in the Notification Gazette no. 7 and in the UNHCR Property Bulletin Office. The Gazette and the List were left with a kiosk owner who agreed to make them available to the interested parties and at the entry of village Gërmovë/Grmovo. The same publications were also left at the Municipal Court, Municipal Assembly, as well as in the offices of several competent municipal authorities in Vitia/Vitina.
 4. Within 30 days legal time frame, pursuant to provision of Section 10.2 of the Law No. 03/L-079, no parties expressed any interest to take part in the proceedings regarding the property that is subject of the claim; since no party contested the validity of the claim the same remained uncontested.
 5. Except for the Ruling on Inheritance, the KPA could not verify any of the above mentioned documents.

The Judgment P.Br.181/96 was not found in the Municipal Court of Vitina/Vitina nor in the Municipal Court of Vranje wherein the documents of the Municipal Court of Vitia/Vitina were displaced.

In the Municipal Court of Vitia/Vitina the data of the year 1999 were missing and the Registrar of the Court stated that the Court does not have any knowledge regarding the clause proving that the Judgment is final. The Municipal Court of Vranje confirmed that not all documents were transferred from the Municipal Court of Vitia/Vitina to the Municipal Court of Vranje.

6. The Executive Secretariat of the KPA on 5 March 2008, *ex officio* found the Certificate for Immovable Property Rights issued by Cadastral Municipality of Vitia/Vitina showing the claimed property as not divided and registered as Socially Owned Property on the name of Agricultural Compound "Morava".
7. Again on 17 October 2011 the Executive Secretariat of the KPA has verified the Certificate for Immovable Property Rights and claimed property was found as undivided (parcel no.72) and registered on the name of H. A. as lessee for 99 years. The update was done in accordance with the declaration 1391/01 dated 6 May 2001 issued by Kosovo Trust Agency.
8. The Executive Secretariat of the KPA on 15 January 2013 as additional effort has sent a letter on Notice of a Potential Refuse of the claim to the Claimant asking him to submit additional evidence which proves ownership right of his mother within 30 days deadline. The claimant received the letter on 31 January 2013, however did not response and provided no evidence.

9. With its decision KPCC/D/A/204/2013 of 11 June 2013 the KPCC refused the claim.
10. On 13 November 2013, the Decision was served on D. J. He filed an appeal before the Supreme Court on 6 December 2013 (henceforth: the appellant).

Allegations of the appellant

11. The appellant alleged that the KPCC decision relies on incompletely determined factual state and erroneous application of substantial law. The appellant, furthermore, alleged that the ownership over the claimed property was proven with the final Judgment P-181/96 which determines ownership of his late mother S. J. The Judgment P-181/96 also decided on the obligation of the respondent to return possession over the property. According to the appellant his mother took the possession over the claimed property in 1997 and she was using it until she died on 19 March 1999. The appellant's ownership was confirmed by final Ruling on Inheritance issued by the Municipal Court of Jagodina. By the end of his appeal the appellant stated that the Privatization Agency of Kosovo could not have sold something it didn't own. No one can transfer more rights to others than those to which they are entitled, and therefore, a third party could not have become the owner based on a contract concluded with someone who is not the owner.

Legal reasoning:

Admissibility of the appeal

12. The appeal was filed within 30 days as foreseen by Section 12.1 of the 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

13. The Supreme Court after evaluating the file, the appealed decision and the allegations of the appellant considers that the appeal is unfounded.

14. A special reference was made to the paragraphs 106 and 108 of the decision KPCC/D/A/204/2013. According the KPCC indicated that the Claimant submitted a final Judgment form 1996 by which the ownership right over the claimed property was transferred to the Claimant's mother but the Judgment could not be verified by the Executive Secretariat. Moreover, the Executive Secretariat located *ex officio* a Certificate of Immovable Property Rights listing the property in the name of a third party. Based on the evidence before it, the KPCC concludes that the Claimant has failed to show ownership or any other property right over the claimed property, immediately prior to or during the 1998/1999 conflict.
15. The right of property can be acquired by law itself, based on legal affair (legal transfer) or inheritance, article 20 of the Law on Basic Property Relations (OG SFRY, No 6/1980), applicable at the time of the alleged transfer of property (as pointed out by the Claimant the alleged transfer occurred in 1997).
16. The KPCC had made a negative verification of the Judgment; P.Br.181/96 dated 06 January 1997, issued by Municipal Court of Vitia/Vitina on which Jovanović bases his claim of ownership.
17. According to the article 33 of the Law on Basic Property Relations (OG SFRY, No 6/1980), on the basis of the legal affair (legal transfer) the property right over the real estate shall be acquired by registration into the "public notary book" (cadastral book) or in some other appropriate way that is prescribed by law.
18. The Executive Secretariat of the KPA has found *ex officio* the Certificate for Immovable Property Rights in the name of third party, updated based on the declaration of the Kosovo Trust Agency, moreover, even prior to the privatization by Kosovo Trust Agency; the claimed property was registered on the name of Agricultural Compound "AgroMorava".
19. The Judgment P.Br.181/96 dated 06 January 1997, issued by Municipal Court of Vitia/Vitina was never executed as it was specified in the enacting clause of the Judgment. The Claimant's mother has not gained the property right since the conditions of article 33 of the Law on Basic Property Relations (SFRY, No 6/1980) were not fulfilled.
20. Even though the Ruling on Inheritance O.Br.139/99 dated 19 July 1999, issued by Municipal Court of Jagodina pronounces the Claimant as the co-owner over ideal part of 1/2, is not considered sufficient evidence as the ownership of the Claimant's mother was not established.
21. Regarding the Appellant's request for compensation for the use of the property without his consent, under the Law No 03/L-079 neither the Commission nor the KPA Appeals Panel of the Supreme Court has jurisdiction over such request.
22. The appeal from J repeats the same allegations that he made before the KPCC. No new evidence has been submitted with the appeal.

23. The Supreme Court finds that the KPCC has made a correct decision, based on a thorough and correct procedure. Accordingly the Supreme Court finds that no violation of the substantial law or incompletely establishment of the facts has been made. The Supreme Court finds the appeal unfounded.
24. In the light of foregoing, pursuant to Section 13.3 under (c) of the Law 03/L-079, it was decided as in the enacting clause of this judgment.

Legal Advice:

25. 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.

Willem Brouwer, EULEX Presiding Judge

Esma Erterzi, EULEX Judge

Sylejman Nuredini , Judge

Urs Nufer , EULEX Registrar