

SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA
KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
PANELI PËR ANKESA TË KPA-së
VEÇE ZA ŽALBE KPA-a

GSK- KPA- A-78/12

Prishtinë/Priština, 7 February 2014

In the proceedings of

V. N.

Appellant/Claimant

vs.

B. SH.

Appellee/Respondent

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Elka Filcheva-Ermenkova, Presiding Judge, Esma Erterzi and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/135/2011 dated 7 December 2011 (case file registered at the KPA under the number KPA 91809) after deliberation held on 7 February 2014, issues the following

JUDGMENT

1. The appeal of V. N. is founded. The Decision of the KPCC/D/A/135/2011 dated 7 December 2011, regarding case file registered at the KPA under the number KPA 91809, is modified.
2. The claim of V. N. in case file registered at the KPA under the number KPA 91809 regarding the cadastral parcel no 445, with the surface of 1 Ar 20 m² located in the Municipality of Suharekë/Suva Reka in the cadastral zone “Galance/Geljance”, is granted.
3. The cadastral parcel no 445 located in the Cadastral Zone of Gelancë/Geljance, Municipality of Suharekë/Suva Reka, which is registered under the name of T. N. in the Certificate for the Immovable Property Rights No. UL 72116009-00138, issued by the Municipality of Suharekë/Suva Reka on 17 August 2009, is to be given to the repossession of J. N., S. N., V.N., D. N. and J. Đ. as the heirs of the late T.N. as verified with the inheritance decision of the Municipal Court in Suharekë/Suva Reka, dated 22 November 2010, no T. no 51/2010.
4. Any other person occupying the mentioned parcel should vacate the parcel within 30 (thirty) days after the delivery of this judgment.
5. Should any other person occupying the parcel fail to comply with the order to vacate the parcel within the period mentioned, he/she will be evicted from the parcel.

Procedural and Factual Background

1. On 25 October 2006, the claimant V. N. filed a claim with the Kosovo Property Agency (KPA) alleging that his father T. N. was the property right holder of the cadastral parcels no 444, 445, 446, 447 and 448 in the place called “Sushica/Otava”, Cadastral Zone of Gelancë/Geljance, Municipality of Suharekë/Suva Reka. The total surface of parcels is 0.78.67 ha. Claiming that the loss of possession of the properties derived from the conditions of the armed conflict, he asked for the re-possession of the parcels. To support the allegations on possession and ownership, he provided the copy possession list no 138, issued on 2 June 2006, by the Department for Cadaster Geodesy and

Property of the Municipality of Suha Rekë/Suva Reko, indicating the registration of those parcels under the name of T. (G.) N. He mentioned that the inheritance procedure had not been started by then. KPA verified the possession list no 138 in the Cadaster of Suharekë/Suva Reka.

2. Later on, the Claimant provided the inheritance decision no T. no 51/2010, issued on 22 November 2010 by the Municipal Court of Suharekë/Suva Reko, showing the heirs of T. N. as J. N., S. N., V. N., D.N. and J.Đ. for the heritage of the immovable property verified by the Certificate for the Immovable Property Rights No. UL 72116009-00138, issued on dated 17 August 2009 by the Municipality of Suharekë/Suva Reka, Cadastral Zone of Gelancë/Geljance.

3. The Respondent B. S., on 11 February 2010, filed a statement that his father O. Sh. bought the cadastral parcels no 442/1, 442/2 and 445 in the location called “Sushica/Otava” from A. Z. on 7 September 1982. In that statement, he mentioned that T. N. under whose name the land is registered had knowledge that they bought the land from A. Z. He did not explain how and why the land was transferred, if ever, to the ownership of A. Z.. On 15 June 2010, he filed a supplementary statement claiming ownership right over the cadastral parcel no 445 in Cadastral Zone Gelancë/Geljance, indicating Zymer Zmajlaj as witness.

4. The original claim contained parcels no 44,445,446,447,448 and 449 which was registered with the KPA under KPA13827 whereas with the report of KPA dated 13 July 2011, the claim about parcel no 445 was separated and registered under case no KPA91809. The rest of the claim for the others parcel remained under case no KPA13827.

5. On 7 December 2011, with the decision KPCC/D/A/135/2011, the Kosovo Property Claims Commission (KPCC) decided that the claim be refused. The Commission, in its reasoning stated that based on the evidence provided by the respondent during the oral hearing, it was satisfied that the claimed property was transferred to the father of the respondent in 1982. However, the Commission did not specify the evidence provided by the respondent during the hearing.

6. The Decision was served on the claimant on 3 May 2012. He filed an appeal on 17 May 2012.

7. In his appeal, the appellant argued that they never sold the land to the respondent or his father. He further alleged that the respondent did not present any evidence to show the sale. He mentioned that A. Z. was not the owner of the land so that he could not sell it to another person.

8. The appeal was not served on the respondent; however, the parties were invited to a hearing in the Supreme Court with the order dated 12 November 2013. In that order they were both reminded to present their arguments and evidence as to their allegations on the ownership of the cadastral parcel no 445.

Arguments of the parties during the hearing

9. Both parties were heard in the hearing of 11 December 2013. The claimant relied on the possession list and the certificate showing his father as the owner of the parcel. The respondent confirmed that he has no document to show the alleged sale contracts as this was the case in the session of the KPCC, at the first instance. The claimant stated that he holds the claimed property together with his sister and brothers but not alone.

10. The respondent claims in his written statements that his father bought the land from Z.A. and A. Z. in 1980 which was transferred into their name in 1982. However, for the property in question, that is to say parcel no 445, he explained during the hearing of 11 December 2013 that parcel no 445 is in the name of his neighbor which is not arable land and separated by ditches. He admitted at the same time, the land was not usable or available to be cultivated. He also mentioned that he is ready to buy it.

11. On the other hand, the claimant insisted on the allegation of that the land was in his father's use till the conflict which is a part of meadow. He asserted that they used it till June 1999.

12. Despite of the fact that both parties described the land in dispute differently, they agreed during the hearing that they were talking about the same land.

Admissibility of the appeal

13. The appeal is admissible. It is filed within the deadline prescribed by UNMIK Regulation No 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 Law 03/L-079.

14. 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. The first condition is related to the jurisdiction of the KPCC whereas the second one on the burden of evidence and the merits of the claim.

Jurisdiction

15. The claimant alleged that based on the documents which show that the parcel no 445 was registered in the name of his father, they had been possessing and using the land till June 1999 and they stopped working when they fled due to the conflict. Despite claiming that the land was bought by his father from the family Z, the respondent accepted during the hearing before the KPA Appeals Panel that the land was not being under their use because it was not an arable land. The Supreme Courts holds the opinion that the loss of possession of the land derives from the conditions of the conflict of 1998-1999. Accordingly, the KPCC had jurisdiction over this new claim at hand.

Merits of the appeal

16. The appeal is grounded. The Supreme Court notes a serious misapplication of the applicable law as to supporting the arguments with evidence. The Supreme Court is in the opinion that the respondent did not provide any valid evidence to prove the alleged sale. Therefore, the Decision of the KPCC is to be modified and the claim is to be examined on its merits.

Merits of the claim

17. The respondent's allegations that they bought the land from Z. A. and A. Z. do not present legally valid evidence to confirm the ownership right over the contested parcel as stipulated in Article 4, paragraph 2 of the Law on Movement of Immovable Properties (Official Gazette of SAP Kosova, No 45/81 and 29/86) and Article 20 of the Law on Basic Property Relations (Official Gazette of R.S.no.6/80). According to these legal provisions applicable at the time of conclusion of the alleged sale contract, in order to acquire ownership it is necessary to have a sales contract made between the registered owner and the buyer in writing that is verified by a competent body such as courts or notaries, which is lacking in the concrete case. During the first instance trial and written proceedings as well before the KPA Appeals Panel, the respondent admitted that he does not hold any document to prove the alleged sale contract. The statement of the respondent or the witness statements are not sufficient proof to conclude that the respondent bought the land from Z.A./ A. Z. (the names are quoted as mentioned in the minutes of the hearing). First of all, these persons are not the registered owners of the property. Secondly, respondent does not hold any

written contract as required by the applicable law. Thus, the respondent failed to prove the link between the registered property right holder and Z. A. and/or A. Z., subsequently himself as to the transfer of the ownership right as required by law.

18. The Supreme Court establishes that the claimant proved his father's ownership rights over the cadastral parcel no 445. Pursuant to Article 20 of the Law on Basic Property Relations, the property rights holder over the claimed immovable property is T. N. The claimant is one of the inheritors of him as shown in the inheritance decision besides other heirs. He filed the claim as a member of the family household whereas he stated during the hearing that not only him but also other inheritors are co-owners of the cadastral parcel no 445, in zone Sushica/Otava. Accordingly, the cadastral parcel no 445 is to be returned to the heirs of the registered owner T.N.

19. Based on the facts and interpretation of the Supreme Court mentioned above, the Decision of the KPCC is to be modified and the claim is to be granted as in the enacting clause.

19. The above mentioned leads to the conclusion that the appellant is the rightful owner of the parcel. Therefore the appellant's appeal is founded and therefore, the decision of the KPCC is modified and the appellants claim is granted, this based on Section 13.3 (a) of the UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, with reference to the Articles 195, Paragraph 1 under e) and Article 201 under d) of the Law on Contested Procedures.

Legal Advice

20. Pursuant to Section 13.6 of Law 03/L-079, this judgment is final and cannot be challenged through an appeal.

Elka Filcheva-Ermenkova, EULEX Presiding Judge

Sylejman Nuredini, Judge

Esma Erterzi, EULEX Judge

Urs Nufer, EULEX Registrar