

**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-020/14

Prishtinë/Priština, 4 November 2015

In the proceedings of:

M.M.

Olge Jovići Rite 7/1

Kraljevo

Serbia

Appellant

vs.

R.B. , represented by his family household member A.B.

Ulcinit 163

Prizren/Prizren 20000

Appellees

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Rolandus Bruin and Krassimir Mazgalov, Judges, on the appeal against the decision of the Kosovo Property Claims Commission (henceforth: KPCC) no. KPCC/D/A/188/2013 dated 13 February 2013 (case file registered at the KPA under No. KPA22065), henceforth also: the KPCC Decision, after deliberation held on 4 November 2015, issues the following

JUDGMENT:

1. The appeal of M.M. is accepted as grounded.
2. The decision no. KPCC/D/A/188/2013 dated 13 February 2013, as far as it concerns claim no. KPA22065 is annulled as rendered in the absence of jurisdiction.
3. The claim of M.M. , registered at KPA under no. KPA22065 is dismissed as inadmissible whereas the claim is not within the scope of jurisdiction of the Kosovo Property Agency.

Procedural and factual background

1. On 23 January 2007 M.M. filed a claim at the Kosovo Property Agency (KPA). She claimed co-ownership over 1/3 ideal part of an agricultural parcel with a total surface of 1.16.52 Ha, Cadastral Zone Prizren/Prizeren, parcel no.8700 in Buzagilak, Prizren/Prizren (henceforth: the claimed property).
2. M.M. submitted *inter alia* to KPA:
 - Possession list No.610/07.08.1990 issued by Geodesy Directorate in Municipality of Prizren/Prizeren, listing Claimant's late husband Z.M. as PRH of 1/6 ideal part of the claimed property;
 - Judgment No.70/1996 issued by District Court of Prizren on 25.03.1996. By this decision, the Court refuses the appeal of SOE Progress-Export against the Municipal Court judgment 751/95, by which Claimant's late husband Z.M. and his brother P.M. were together found Property Right Holder(PRH) of the claimed property with 1/6 ideal part and surface of 38.84 Ar. This Judgment was negative verified- not found in court archives;
 - Marriage certificate No.91/04.08.2004 showing that the Claimant was married to Z.M. ;
 - Death certificate No.456/29.06.2004 showing that claimant's husband passed away on 23.06.2004;
 - Inheritance decision No.934/04 issued by Municipal Court of Kraljevo, Serbia on 05.08.2004; the court decided that the Claimant inherited from her husband Z.M. the claimed property.

3. KPA initially notified the claim on 29 August 2008. The claimed property was found not occupied.
4. On 24 September K.B (hereinafter RP1) participated the proceedings before KPA/KPCC. The last alleged that R.B. purchased the claimed property from Claimant's late husband Z.M. .
5. KPA re-notified the claimed property on 12 June 2012. The property was found occupied by A.B. .
6. On 14 June 2012 A.B. on behalf of R.B. (hereinafter RP2) participated the proceedings on the claim and alleged legal rights over the claimed property.
7. To support his allegations RP2 submitted to KPA:
 - Possession list No.610/29.08.2000 listing him as PRH of 1/3 ideal part and Claimant's late husband Z.M. as PRH of 1/6 ideal part of the claimed property. Other co-owners according to this document are G.M., J.M., P.M., with 1/6 ideal part each of them;
 - Copy of plan of the claimed property No.019/29.08.2000 listing RP2 and G.M., J.M., Z.M., P.M. as co-owners of the parcel with the abovementioned ideal parts;
 - Court certified statement of two witnesses- M.R. and F.M. They state that they were present in 1995 when an agreement between RP2 from one side and Claimants late husband on the other side was concluded for purchase of the claimed property. They state, that Z.M. came and offered his property to RP2 for sale. The parties have agreed that the price of 18000DM had to be paid and a part of it- 17000DM had been paid in cash. They further state that since this time RP2 has entered into possession of the parcel.
8. In a witness hearing before KPCC, which was conducted on 15 January 2013, M.R. and F.M. confirmed their abovementioned statement.
9. KPA Ex Officio found a Certificate for the immovable property rights, dated 31 March 2009, listing Claimant's late husband as co-owner of the parcel with 1/6 ideal part, whereas the RP2 is listed as co-owner with 1/3 ideal part.
10. On 18.09.2012 the Executive Secretariat of KPA contacted the Claimant to clarify the discrepancies of the ideal parts of the parcel between the Possession List, listing the Claimant's late husband as co-owner with 1/6 ideal part and the Inheritance decision listing Claimant as owner of 1/3 ideal part, inherited from her husband. Claimant stated that she remains owner of 1/3 ideal part whereas the other co-owners have sold their parts. In her statement she acknowledged the RP2 as co-owner with 1/3 ideal part.
11. The KPCC refused the claim. KPCC reasoned in paragraphs 64-70 of the Cover Decision and with a final conclusion: Claimants husband sold the claimed property in an informal purchase contract in 1995; the Claimant has failed to show ownership or any other property right over the claimed property immediately prior or during the 1998-99 conflict.
12. The decision was served upon M.M. on 19 August 2013.
13. Appellant M.M. filed an appeal against the KPCC decision on 10 September 2013.

14. The respondents were served with the appeal on 28 January 2014. Until the 30 days deadline no replay has been submitted.

Allegations of the parties:

15. The Appellant/Claimant alleges that she is an owner of 1/3 ideal part of the claimed property, inherited from her late husband Z.M. who passed away on 23 June 2004. The Appellant acknowledges the RP2 as co-owner with 1/3 ideal part but not on the basis of the informal contract from 1995. She alleges that the contract from 1995 between her late husband as a seller and R.B. as a buyer is invalid.
16. The Appellees alleged before KPA/KPCC that R.B. is a co-owner of the claimed property with 1/3 ideal part since 1984-1985 and he purchased another 1/6 ideal part from appellant's late husband in 1995.

Legal reasoning:

Admissibility of the appeal

17. 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) therefore it is admissible.

Jurisdiction of the KPCC

18. 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 does not only has 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.
19. The Claimant/Appellant alleges that she inherited from her late husband (passed away on 23 June 2004) 1/3 ideal part of the claimed property.
20. The appellee R.B. alleges that he is a co-owner with 1/3 ideal part of the same property since 1985 and the appellant is not contesting this allegation. Further the appellee alleges that he purchased another 1/3 of the claimed property from appellant's late husband in 1995 thru an informal (oral) contract. The appellant claims that this contract is invalid. In conclusion the dispute between the parties is concentrated on the validity of the purchase contract from 1995 between Z.M. as a seller and R.B. as a buyer.

21. Regardless of whether this purchase contract made between the Appellant's late husband and the Appellee R.B. is valid or not, the Supreme Court observed that the loss of possession of the claimed property derives from circumstances that occurred before the conflict. It is clear that Appellant's husband was not using the claimed property before the war, but the B. family was in possession of the whole parcel and using it. The Claimant failed to show that the loss of the possession of the property derived from a condition related to the armed conflict. Thus, the dispute among the parties exceeds the specific jurisdiction and the competence of the KPCC.
22. The Supreme Court concludes that the KPCC decided wrongly and unlawfully when KPCC rendered the appealed decision, since it had no jurisdiction over the claim. Therefore, the KPCC decision 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.

Legal Advice

23. Pursuant to Section 13.6 of Law UNMIK 2006/50 this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Rolandus Bruin, EULEX Judge

Krassimir Mazgalov, EULEX Judge

Signed by: Urs Nufer, EULEX Registrar