

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-087/2015

Prishtinë/Priština,
22 March 2017

In the proceedings of:

Z. Đ.

Appellant

vs.

N/A

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Krassimir Mazgalov and Beshir Islami, Judges, deciding on the appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/A/255/2014 dated 27 August 2014 (case files registered at the KPA under number KPA13367), after deliberation held on 22 March 2017, issues the following

JUDGMENT

1. The appeal of Z. Đ. against the Decision of the Kosovo Property Claims Commission KPCC/D/R/255/2014 regarding case file registered at the KPA under the number KPA13367, is rejected as unfounded.
2. The Decision of the Kosovo Property Claims Commission, KPCC/D/R/255/2014 regarding the case file registered at the KPA under the number KPA13367 is confirmed.

Procedural and factual background

1. On 5 September 2009, Z. Đ. (hereinafter: the Appellant) filed a Claim with the Kosovo Property Agency (hereinafter: the KPA) on behalf of his late father T. Đ., seeking repossession over two (2) houses with the surface of 50 m² and 100 m² while the land on which the house is placed contains the surface 00.12.00 ha, located at the place called Kripimeh/Krpimej, Municipality of Podujevë/Podujevo (hereinafter: the claimed property). The number of the cadastral parcel on which the claimed property is located was not specified by Appellant.
2. The Appellant declared that his father has bought the claimed property while the loss of possession was as the result of the circumstances of 1998/1999 that accrued in Kosovo.
3. To support his Claim, the Appellant provided the KPA with the following documents:
 - Contract on Sale concluded on 30 March 1961 between V. Š. as the seller and T. Đ. and K. L., both as the buyers. The subject of the sale was the land with the house and a shed. The contract does not specify neither the cadastral parcel on which the claimed property was located nor the surface on the land which was the subject of the sale,
 - Receipt dated on 30 March 1961 showing that the seller has received the amount of 350.000 dinars (Yugoslavian Currency) from T. Đ. and K. L. on the name of the sale transaction price,
 - Contract on Sale No 2148 concluded on 31 December 1965 between “Agricultural Cooperative Krpimej/Kripimeh” as the seller and T. Đ. as the buyer. At the Contract it is specify only the surface from 00.05.59 ha,
 - Receipt No 1308 dated on 31 December 1965 showing the Appellant’s father had paid the amount from 8500 dinars (Yugoslavian Currency) but from the receipt it cannot be established what for he paid.

- Death Certificate No 203-58/06-08-4231 issued by Civil Registration Office of Podujevë/Podujevo Municipality on 26 July 2005 showing that T. Đ. passed away on 31 May 1996.
 - Witnesses Statement No 8990/09 certified before First Municipal Court of Beograd on 9 July 2009, whereby, B. O. and M. R. testify that T. and T. Đ. is the same person.
4. The notification of the claim was carried out on 20 January 2008. The claimed property allegedly was found be occupied house that was occupied by M. G. who did not claim any right over the property.
- Since there is no cadastral parcel specified by the Appellant or any other information related to the land on which the claimed house is located, there is a doubt about the Notification's Report reliability.
- The Claim is considered as uncontested by Executive Secretariat of KPA because no party filed a response within the legal deadline of 30 days, pursuant to section 10.2 of the Law No. 03/L-079.
5. The Executive Secretariat of KPA did not found any of the evidences submitted by the Appellant despite its effort. According to the verification report of 31 October 2013 there is no property registered on the name of the Appellant's father before the Municipal Cadastral Office of Podujevë/Podujevo.
6. The Appellant has been contacted by the Executive Secretariat of KPA and he has been advised to submit additional documents through which he can prove the rights he is seeking for. As an additional effort, the Executive Secretariat of KPA provided the Appellant with an information letter asking him to submit additional documents and informing him that if he fails to submit the request documents the claim may be refused by the Commission. The letter was received by the Appellant on 14 October 2013 (page no 154 of the case file). The Appellant did not response to the Executive Secretariat of KPA.
7. On 27 August 2014, the KPCC with its decision KPCC/D/R/255/2014 refused the Appellant's claim with the reasoning that the he has failed to show the ownership or any other property right over the claimed property immediately prior to or during the 1998-1999 conflict.
8. The Decision was served on the Appellant on 28 October 2014, while he filed an appeal on 26 November 2014.

Allegations of the Appellant

9. The Appellant challenged the KPCC's Decision by stating that the Decision rests on the erroneously and incomplete established of the factual situation and violation of the material and procedural law.
10. The Appellant alleges that his family gained the claimed property based on two (2) Contracts on Sale that were concluded between Agricultural Cooperative Krpimej and his late father and another Contract on Sale concluded between his father, K. L. as the buyers and V. Š. as the seller of the house. The purchase price was paid and the receipts were submitted to the Claim but according to the Appellant the transfer of the immovable right on the name of his father was not performed.
11. The Appellant declared that his family had a possession over the claimed properties until year 1999 when due to the overall circumstances had to leave Kosovo, therefore, the fact, that the Appellant failed to show the ownership or use right over the claimed property is not true.
12. Based on the above, the Appellant seeks the Supreme Court to accept his appeal as grounded and to confirm the repossession right over the claimed properties in favour of the Appellant.
13. At the appeal it was attached the Transcript of the Possession List no 64 issued by Displaced Cadastre of Kruševac on 18 November 2014 that appears to list 2 two cadastral parcel on the name of V. Đ. (Appellant's grandfather).

Legal reasoning

Admissibility of the appeal

14. The appeal was filed within 30 days as foreseen by Article 12.1 of the Law No 03/L-079 and is admissible.

Merits of the appeal

15. The Supreme Court reviewed the appealed Decision pursuant to provisions of Article 194 of Law on Contested Procedure No 03/L-006 (henceforth: LCP) and after evaluating the allegations of the Appellant it found that the appeal is unfounded.

16. The Supreme Court finds that the KPCC has rendered a correct Decision when refused the claim.
17. Pursuant to Section 3.1 of the Law 03/L-079, a Claimant is entitled to an order from the KPCC for the repossession of a property, if the claimant “proves” his ownership right or the right to use a private property, including agricultural and commercial property, and also proves that he/she is not able to exercise such right due to the circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.
18. According to this legal provision, the Appellant had to submit evidence to prove the ownership right to, or the right to use the immovable property.
19. The KPCC bases its Decision on the fact that the Appellant failed to provide any evidence that could be verified by the KPA, that his father as property right holder enjoys any ownership right over the property, as well as that the Executive Secretariat did not *ex officio* obtain such evidence.
20. The Contract on Sale dated on 30 March 1961 as well as the Contract on Sale dated on 31 December 1965 were not legalized before the competent Court, thus, they are absolutely with no legal effect.
21. The Appellant himself declared that the transfer of the ownership right on the name of his father was never performed.
22. The appeal of the Appellant recalls the same allegations as she stated before the KPCC. No new evidence was provided with the appeal.
23. Considering the above, the Supreme Court finds that the KPCC has taken a correct and grounded Decision in the course of a proper procedure. Consequently, the Court finds that there were no violations of material rights or incomplete determination of factual situation.
24. As far concerns the new submitted evidences, they are not considered by the Court. This is due to the Section 12.11 of the Law No. 03/L-079 which stipulates that:
New facts and material evidence presented by any party to the appeal shall not be accepted and considered by the Supreme Court unless it is demonstrated that such facts and evidence could not reasonably have been known by the party concerned.
25. In the light of the foregoing, pursuant to Article 13.3 sub-para (c) of Law No. 03/L-079 is decided as in the enacting clause of this judgment.

Legal Advice

Pursuant to Section 13.6 of the Law 03/L-079, this Judgment is final and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Beshir Islami, Judge

Sandra Gudaityte, EULEX Registrar