

**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-92/13

Prishtinë/Priština

2 April 2014

In the proceedings of:

**D S
N S
S**

Claimant/Appellant

vs.

**N AH
K /K
P**

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Elka Filcheva-Ermenkova, Presiding Judge, Dag Brathole and Erdogan Haxhibeqiri, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/R/156/2012 (case file registered at the KPA under the number KPA50069), dated 6 June 2012, after deliberation held on 2 April 2014, issues the following

JUDGMENT

1. The decision of the Kosovo Property Claims Commission KPCC/D/R/156/2012 (case file registered at the KPA under the number KPA50069), dated 6 June 2012, is annulled as rendered outside jurisdiction.
2. The claim of D S KPA50069 is dismissed as inadmissible.

Procedural and factual background:

1. On 2 October 2007 the appellant, then claimant D S filed a claim at the Kosovo Property Agency (KPA), seeking confirmation of his property right over a land at the area of Prizren, village Korishë/Koriša, cadastral parcel 717, with a surface of 50 ar – hereinafter the disputed property or the property.
2. He claimed the property belongs to his family on the basis of a court decision for restoration of the land – case 504/1997 in the Municipal Court of Prizren.
3. In front of the Commission the claimant presented a contract from 1961 for the sale of the disputed property from S S to the Municipality in Prizren. Allegedly the contract was certified (contract number 659/62, dated 11 April 1962) in the Registry books of the Municipal Court in Prizren.
4. In 1997 the contract was declared null and void – decision of the Municipal Court in Prizren from 17 March 1997, case number 444/1995, entered into force on 9 June 1997.
5. In another case the Municipal Court in Prizren decided that parcel number 61 (a different from the property, subject of the current case - parcel 717) has to be returned, restored into possession of the family of the claimant – namely his alleged predecessors S Z , S D and V Z – decision from 23 September 1998, taken in case number 504/1997 (noted already in point 2 *supra*).
6. It is established that parcel 717 (as was the numbering in 1962 and in 1997) is in the current cadaster numbered as 3340 and is registered in the cadaster as municipal land – Municipality of Prizren.
7. Regardless of the new cadastral numbering the notification in the case was made in accordance with the current cadaster and the notification sign was put on the new parcel 717

- (which is not the disputed parcel). As a result of that the person that possesses the current parcel 717, namely N A was included in the procedure in front of the KPCC.
8. The respondent N A claimed his family has always possessed parcel 717. It is established however that this parcel has nothing to do with the one claimed by D S and therefore the position of the respondent was completely irrelevant towards the claim.
 9. The KPCC refused the claim. The KPCC accepted that the court decision in case 504/1997 does not refer to the claimed property; the same was registered as socially owned. The KPCC did not reflect on the legal effect of the decision taken in case 444/1995 with which the contract of 1962 for the sale of parcel 717 (now 3340) was declared null and void.
 10. The decision was served on the claimant on 13 March 2013. He filed an appeal on 3 April 2013.
 11. The respondent did not react to the appeal.

Allegations of the appellant:

12. The appellant asserts that he has proven his right of property. He alleges that the property was sold from his family to the Municipality in Prizren in 1962 but afterwards this contract was pronounced null and void with the decision of the court taken in case 444/95. He claims he has lost the property because of the armed conflict and there is no reason his claim to be refused.

Legal reasoning:

Admissibility of the appeal:

13. The appeal is admissible. It has been filed within the 30 day period as prescribed in section 12.1 UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, on the resolution of claims relating to private immovable property, including agricultural and commercial property (hereinafter the Law).

Validity of the appealed decision and jurisdiction:

14. The decision of the KPCC had to be annulled as rendered in the absence of jurisdiction.
15. According to Section 3.1 of the Law the Commission has the competence to resolve claims related to the armed conflict of 1998/1999; claims related to rights that cannot be exercised

- because of circumstances directly related or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.
16. In the current case it is established that in 1962 the ancestor of the claimant sold parcel 717 (now 3340) to the Municipality in Prizren. It is established that with court decision from 17 March 1997 taken in case number 444/1995 in the Municipal Court in Prizren this contract was proclaimed null and void under the provisions of art. 8a of the Law on transfer of immovable property of 1981 (OG of SRS 43/81, as amended in 1987 – OG of SRS 28/1987). The decision was not appealed and entered into force on 9 June 1997 (according to the verification stamp of the Municipal Court in Prizren).
 17. The legal consequences of nullity at the time of the decision were regulated in art. 104 of the Law on Obligations and Torts (OG SFRY 29/1978). According to art. 104 *ibid* in case of nullity each contracting party has to reconstitute what it received on the ground of such a contract, unless the nature of the contract would prevent such restitution, which is not the case.
 18. As a consequence of the decision for nullity the property right over parcel 717 (now parcel 3340) was restored into the *patrimonium* (the totality of all rights and obligations) of the original owner S S (or his inheritors if at the time of the decision he was already deceased, which seems to be the case).
 19. If the claimant is one of the inheritors of S S , which could be inferred from the data in the file, he also has a right over this property within the limits of his inheritance rights (and in this regard the KPCC conclusion that there is no evidence the property to have been restored to the family of S S in 1997 was wrong).
 20. However first of all there is no data as to what are the limits of the inheritance rights of the claimant and second the facts as seen by the court exclude the possibility this property to have been lost because of the armed conflict in 1998/1999.
 21. In addition there is no implication that either the Municipality in Prizren or any other person disputes that the former parcel 717, which is now parcel 3340 was restored to the family of S S . The respondent to the claim N A occupies a parcel which has nothing to do with the parcel, subject of the current dispute, which according to the new cadaster is with number 3340.
 22. What seems to be the issue is that this parcel – 3340 (former 717) is still recorded as municipal land in the property registry.
 23. What needs to be done is the register of immovable property to be corrected in accordance with the rights of the inheritors of S S .

24. The established facts in their totality lead to the only one conclusion that there is no property dispute related to the armed conflict in 1998/1999. It did not fall within the jurisdiction of the KPCC and the Appeals Panel of the Supreme Court. Therefore the Court had to annul the decision and dismiss the appeal.
25. On the basis of the above and in accordance with section 12.2 of the Law and art 198.1 of the Law on Contested Procedure the Court decided as in the enacting clause.

Legal Advice

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.

Elka Filcheva-Ermenkova, EULEX Presiding Judge

Dag Brathole, EULEX Judge

Erdogan Haxhibeqiri, Judge

Urs Nufer, EULEX Registrar