

SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA

KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
AGJENCIONI KOSOVAR PËR PRONA, KOLEGJI I APELIT TË AKP-së
KOSOVSKA AGENCIJA ZA IMOVINU, ŽALBENO VEĆE KAI

GSK-KPA-A-186/15

Pristina
24 January 2018

In the proceedings of:

I.L.

Appellant

Vs.

L. K.

Appellee No.1

B. V.

Appellee No.2

T. H.

Appellee No.3

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Beshir Islami, Presiding Judge, Anna Bednarek and Shukri Sylejmani, Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/A/244/2014 (the case file registered at the Kosovo Property Agency under the number KPA36254), dated 18 June 2014, after the deliberation held on 24 January 2018, issues the following:

JUDGMENT

1. The Appeal filed by I. L. against the Decision of the Kosovo Property Claims Commission KPCC/D/A/244/2014, dated 18 June 2014, in relation to the Claim registered at the Kosovo Property Agency under the number KPA36254, is rejected as ungrounded.
2. The Decision of the Kosovo Property Claims Commission KPCC/D/A/244/2014, dated 18 June 2014, in relation to the Claim registered at the Kosovo Property Agency under the number KPA36254, is confirmed.

Procedural and factual background

1. On 27 April 2007, I. L. (hereinafter “the Appellant”) filed a Claim with the Kosovo Property Agency (hereinafter: “the KPA”) seeking a re-possession over cadastral parcel No. 573/1, with the surface of 0.41.46 ha, located at the place called “Kosač”, Brestovik-Municipality of Peja/Peć (hereinafter “the claimed property”), alleging to be the owner of it and that the loss of possession took place as a consequence of circumstances related to the armed conflict, whereas the property is currently occupied. Later, in a complementary statement he claimed that his property was sold without his permission by U. B. from Pejë/Peč, exceeding granted authorisation.
2. Together with the Claim, he provided the KPA *inter alia* with the following documents:
 - A Copy of Possession List No. 102, issued by the Municipal Geodesy Directorate in Pejë/Peč on 10 June 2004 which shows that the Appellant was the owner of the claimed property.
 - A Copy of the Contract on Sale concluded on 11 May 2007 between I.L. in the capacity of Seller and U. B. in the capacity of the Buyer. The Contract was certified at the First Municipal Court in Belgrade under the No. 7443/07.
 - A copy of the Power of Attorney given by the Appellant to U. B. on 8 February 2007, wherein it was specified that the Appellant authorised U.B. to define the cadastral borders of the cadastral parcel No. 573/1 and to prepare the parcel for transformation into a construction land. The Power of Attorney was certified at the Directorate for Local Administration of Kragujevac under the No.1828.
 - A copy of the Power of Attorney given by the Appellant to U. B. by which the Appellant authorises U. B. to undertake actions with regard to the cadastre by defining the parcel borders and selling the property. The Power of Attorney was certified at the Directorate for Local Administration of Kragujevac under the No.1828. (check the number, please)
 - A copy of the Pre-Contract on Sale concluded on 7 February 2007, signed by I. L. in the capacity of Seller and U. B. as Buyer. Through this pre-contract, subject of which was the sale of the claimed property, the parties had agreed for the purchase price to be 40.000.00 Euros and to conclude a Contract before the Court at the latest by 31 July 2007. As an advance payment, 6,000.00 were paid and at the end of Contract, the acknowledgment of receiving the advance payment was written by hand.
 - A copy of the Death Certificate issued by the administrative authority of the city of Belgrade on 22 January 2014, which shows that M. V. died on 30 July 2011 in Belgrade.
 - A copy of the Summary Indictment PP.Nr.883/11 of the Pejë/Peč Municipal Prosecution Office against M. Z. for unlawful occupation of a property belonging to the Appellant, but not the claimed property.

- A copy of the Certificate for Immovable Property Rights No. 00102 dated 5 June 2011 and issued by the Cadastral Office of Pejë/Peč Municipality showing that the claimed property is registered under the name of The Appellant.
 - A copy of the Judgment rendered in the case P.Nr.245/08 on 19 May 2008 pronouncing U.B. guilty of altering the content of the original document in order to gain benefit, by which action he had committed a criminal offence described in the Article 332 of the Provisional Criminal Code of Kosovo.
 - The Appellant's submission notifying the KPA that new houses were constructed on the claimed property by B. V., L. K. and T. H.
 - A copy of the Criminal Report against M. M. for unauthorised cadastral changes in order to gain benefit.
 - A copy of the Judgment rendered in the case C.Nr.697/07 by the Municipal Court in Pejë/Peč on 4 February 2008 recognizing the buyer's ownership right over the cadastral parcel 566/1,3, 4 and 5.
This Judgment was quashed by the Ruling of the District Court of Pejë/Peč issued in the case Ac.Nr.201/08 on 22 June 2008.
 - The Appellant's submission notifying that the possessor of the land parcel 566/1 constructed a residential house which extended also to a part of parcel 573/1.
 - The copies of the photos of residential buildings constructed on the claimed property.
3. The KPA's Executive Secretariat visited the property on 5 June 2008 and on 7 October 2013. The Claim was published in the KPA Gazette No. 7 on 30 August 2010. During the last visit, as reflected in the Notification Report of 7 October 2013, the property was found to be occupied, with newly built residential houses.
 4. On 11 October 2013, the Appellee No.1: L. K. claimed that he had purchased 00.03.00 ha of the land parcel 573/1. To support his allegations, he submitted to the KPA:
 - A copy of the Power of Attorney given by the Appellant to U. B. on 8 February 2007. The Power of Attorney was certified at the Directorate for Local Administration of Kragujevac, under the number 1828.
 - A copy of the Pre-Contract on Sale concluded between the Appellant represented by U. B., as Seller and L. H. as Buyer of 00.03.00 ha from the cadastral parcel 573/1 for a price of 4,350.00 Euros, with separate instalments and with the first instalment being paid on 25 October 2007, whereas the second instalment on 30 December 2007.
 - A copy of the Statement, certified by the Notary Public of F. K. and G. J., by which the latter persons declare with full responsibility that they were mediators and present during the conclusion of the Pre-Contract.
 5. On 3 October 2013, the Appellee No.2 B.V. claimed that he had purchased 00.03.00 ha of the land parcel 573/1. To support his allegations, he provided the KPA with the following:
 - A copy of the Power of Attorney given by the Appellant to U. B. on 8 February 2007. The Power of Attorney was certified at the Directorate for Local Administration of Kragujevac under the number 1828.
 - A copy of the Pre-Contract on Sale concluded between the Appellant represented by U.B. as Seller and B. V. as Buyer for the purchase of 00.03.00 ha of the cadastral parcel 573/1 with a price of 4,400.00 Euros, with separate instalments and with the first instalment being paid on 25 October 2007, whereas the second instalment on 30 December 2007.
 - A copy of the Statement certified by the Notary Public, of F. K. and Gj. J, by which the latter persons declare with full responsibility that they were mediators and present in the conclusion of this pre-contract.

6. On 11 October 2013, the Appellee no.3 T.H. presented himself in the Agency and claimed that he had purchased 00.04.00 ha from the land parcel 573/1. To support his allegations, he provided the KPA with the following:
 - A copy of the Power of Attorney given by the Appellant to U. B. on 8 February 2007. The Power of Attorney was certified at the Directorate for Local Administration of Kragujevac under the number 1828.
 - A copy of the Pre-Contract on Sale concluded between the Appellant represented by U. B. as Seller and T. H. as Buyer for the purchase of 00.04.00 ha of the cadastral parcel 573/1 for the price of 2,700.00 Euro.
 - A copy of the Statement certified by the Notary Public, of F. K. and Gj. J. by which the latter persons declare with full responsibility that they were mediators and present in the conclusion of this pre-contract.
7. All the Appellees also attached the same documents as the Appellant's do.
8. According to the Verification Reports dated 30 January 2014, the documents were found and verified positively. The claimed property was found to be registered in the Cadastre under the name of the Appellant.
9. On 18 June 2014, the KPCC with its Decision KPCC/D/A/244/2014 (hereinafter "the "KPCC's Decision", "the Decision") dismissed the Claim because it fell outside the jurisdiction of the Commission, since the possession of the claimed property was not lost as a result of the armed conflict that had occurred in Kosovo during 1998-1999. Paragraph 18 of the KPCC's Decision states that "from the documents submitted by the party and those found ex officio by the KPA Secretariat it appears that the inability of using the property by the claimant does not derive from conflict or circumstances related to it; hence, the claim falls outside the jurisdiction of the KPCC." Also in paragraph 82, the KPCC decided to dismiss the claim for compensation of damages or use of property because it fell outside the jurisdiction of the KPCC.
10. The KPCC's Decision was served on the Appellant on 20 October 2014. He filed an Appeal on 13 November 2014.
11. L. K, the Appellee No. 1 received a copy of the Appeal on 22 July 2015, but did not reply to it. B. V, the Appellee No. 2 received a copy of the Appeal on 15 July 2015, and did not reply to it. T. H, the Appellee No. 3 received a copy of the Appeal on 15 July 2015 and did not reply to it.

Appellant's allegations

12. The Appellant states that the Sale Contract was concluded on the basis on forged authorization. He acknowledges the fact that the property has been alienated, but this took place due to the fact that the authorised person exceeded the authorisation granted and forged the original authorization which was solely granted for the purpose of regulation of parcels in the cadastre and not for U. B. to dispose of the property, for example through the sale of the property. He claims that without his consent the property was divided into land parcels and was sold to third persons who have built at least two new houses on the claimed property. Finally, he requests the Supreme Court to quash the Decision of the KPCC and to issue a Judgment recognizing the property right and returns its possession.

Legal reasoning

13. The Supreme Court reviewed the challenged Decision pursuant to provisions of the Article 194 of the Law on Contested Procedure No. 03 L-006 (hereinafter "the LCP") and after evaluating the Appellant's allegations concluded that the Appeal is admissible and timely filed pursuant to Article 186 paragraph 1 in conjunction with the Article 196 of the LCP.

14. The Supreme Court, after reviewing the allegations contained in the Appeal and the content of the case file, found that the KPCC's Decision does not contain any essential erroneous misapplication of the applicable substantive law, nor does it rely on the incomplete and erroneous determination of facts. Therefore, the Appeal cannot be granted.
Pursuant to Article 3.1 of Law No. 03/L-079, the KPCC has the competence to resolve conflict-related claims and property-related claims "directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999". The property was lost as a result of a 2004 transaction even though the claimant alleges that this was without the consent of the owner. If the Commission finds that the possession of the claimed property was lost before or after the dates mentioned above or that the loss of possession was not related to the conflict, it shall dismiss the claim on the basis of Article 11.4 (b) of Law no. 03/L-079. The examination of other elements that refer to the issue of the validity of the Sale and Purchase Contract falls outside the competencies of the KPCC and the Appeals Panel.
15. As it can be seen from the case file, the property had been alienated and sold to at least two different persons and the cadastral records indicate that the cadastral parcel 566 was registered under the names of other persons and that this had included a part of the parcel 573 1 which is the subject of the Claim and the Appeal. This was also asserted by the Appellant, but he insists that the transaction was made on the basis of a forged authorization and without his will.
16. During the submission of the Appeal, the appellant stated that he lost the possession of the claimed properties because U. B. forged the Power of Attorney and performed the sale of the same properties. Furthermore, the Appellant submitted a copy of the Court Decision whereby U. B. was found guilty of altering the content of the document.
17. After reviewing the evidence collected in this case, the Supreme Court held that the Appellant did not prove that the loss of possession of the claimed property was related to the conflict. On the other hand, the Judgment of the Municipal Court of Peje/xx confirms the guilt of U.B. for committing the criminal offense of falsifying and altering the content of the document, and this is not contested by any party. This is in fact the cause of the loss of possession without prejudice to the validity of the pre-contract and exceeding the authorization.
18. The Appellant entered into an agreement relation with U.B, also through signing of the Pre-Contract and the receipt of a deposit of 6 thousand Euros. This Pre-Contract was concluded at the Agency for Trade of Immovable Properties "Stan Promet" in Kragujevac on 7 February 2007, as a result of which the matter turned into a contractual dispute due to misuse of the authorization.
19. This led the Supreme Court to the conclusion that the KPCC has taken a correct decision for right reasons when it rejected the Appellant's Claim. The Commission was right when it considered that the Appellant failed to prove the loss of property right over that property immediately before or during the 1998/99 conflict. Those circumstances and the assessment of the potential validity of these contracts, however, fall outside the jurisdiction of the KPCC. On the other hand, the contestation of contracts signed in 2007 mean that we are not dealing with loss of possession during or after the conflict. This assumption can be challenged again before the competent court. Consequently, the Supreme Court concludes that the KPCC's Decision was right and that it is based on the applicable law. Therefore, the Appeal is ungrounded and should be rejected.
20. The Supreme Court found that through the dismissal of the Claim, the KPCC did not prejudice the property title of the Appellant, but decided correctly, when it ascertained that the content of the Claim falls outside the jurisdiction of the KPCC. Therefore, this Judgment does not prejudice any property right of the parties nor does it present any obstacle for initiation of proceedings before the competent body or competent court.
21. Based on the above, in accordance with Section 13.3 (c) of UNMIK Regulation 2006/50, as amended by Law 03/L-079, it was decided as in the enacting clause of this Judgment

Legal advice

Pursuant to Section 13.6 of UNMIK Regulation 2006/50, amended by the Law 03/L-079, this Judgment is final and cannot be challenged through ordinary or extraordinary remedies.

Beshir Islami, Presiding Judge

Anna Bednarek, EULEX Judge

Shukri Sylejmani, Judge

Bjorn Olof Brautigam, EULEX Registrar