**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-171/13**

**Prishtinë/Priština,**
**16 July 2014**

In the proceedings of:

**I.SH**

***Respondent/Appellant***

vs.

**M.N.P**

***Claimant/Appellee***

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Elka Filcheva-Ermenkova and Willem Brouwer, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/R/173/2012 (case files registered at the KPA under number KPA25689), dated 24 October 2012, after deliberation held on 16 July 2014, issues the following

**JUDGMENT**

1- **The appeal of I.SH is rejected as unfounded.**

**2- The decision of the Kosovo Property Claims Commission KPCC/D/R/173/2012 (case files registered at the KPA under number KPA25689), dated 24 October 2012 is confirmed.**

**Procedural and factual background:**

1. On 27 February 2007 M.N.P filed a claim with the Kosovo Property Agency (KPA), seeking recognition of the ownership right of her father (the Property Right Holder), the late N.T.S over parcel number 4319 in Gjilan/Gnjilane. She asserted that her father purchased the parcel in 1966 and build on it a family house, which was used by him and after his death different members of the family until 1999, when all had to flee from Kosovo.
2. The claimant presented a purchase contract dated 5 May 1966. According to the document the father of the claimant, the late N.T.L bought the land (3 ar and 40 sq m from S.V. The contract refers to parcel with number 2319. The claimant presented as well a certificate, issued by the Municipality in Gjilan/Gnjilane verifying that the Property Right Holder was allowed to build a house in parcel 4319/2. In that regard the claimant clarified that parcel 4319 was subject of a division and she claims the ownership right of the PRH over the residential property build in parcel 4319/2.
3. After the notification, I.SH responded to the claim. He declared he had purchased the same parcel from S.V and presented a purchase contract from 13 April 2000.
4. In September 2012 the Commission ordered an oral hearing to be held. At the hearing the claimant reiterated her claim that the property was purchased in 1966 by her father, the alleged PRH. She also asserted that she has addressed the respondent in order to reach an agreement over the resale of the property but without success. The respondent on his turn claimed that he has purchased the property in 2000 for 118000 DM.
5. Considering the fact that the PRH was given permission to build a house in 4319/2 and that the surface of this 4319/2 was exactly 3 ar and 40 sq m, which is the surface of the parcel, as requested by the claim, the Commission accepted that the difference in the numbers of the parcels – 2319 (as written in the contract of 1966) and 4319 is a mistake. The Commission as well accepted that the respondent could not have acquired the same property from S.V in 2000, because he had already sold the parcel to the PRH long before that, in 1966.
6. Therefore on 24 October 2012, the Kosovo Property Claims Commission (KPCC) with its decision KPCC/D/R/173/2012 granted the claim.

7. The decision was served on the respondent on 13 May 2013. On 11 June 2013, the respondent (henceforth: the appellant) filed an appeal with the Supreme Court, challenging the KPCC's decision. He invokes essential violation of the provision of the Law on Contested Procedure (LCP), erroneous and determination of the factual situation and erroneous application of material law.
8. The respondent refers to a breach of art. 182, para 1 of the LCP, because the Commission did not *ex-officio* assess the active legitimacy of the claimant, whether she could be a party to the procedure. The Commission had to do that in accordance with art. 70 of the LCP. The contract of 1966 shows that the beneficiary was N.L. The Commission had to establish who the heirs of the N.L are. This was needed because there are ongoing court disputes before the Municipal Court in Gjilan/Gnjilane, where N.L.2 is the claimant – case number 499/2009 at the above mentioned Court. The latter with a decision dated 24 January 2009 ruled the claim in front of it waived, as the claimant N.L.2 did not take part in the proceedings.
9. The respondent refers to procedural breach under art. 182, para 2, subpara n LCP, because the decision provides no reasoning and is contradictory.
10. The respondent refers to procedural breach under art. 183 LCP because the factual situation was not properly established. The respondent purchased the property with a valid contract on 13 April 2000. The Commission violated material law, because it did consider that contract.
11. If the decision of the Commission remains in force there will be two recognized owners of parcel 4319/2. The claimant based on the decision of the Commission and the respondent based on the contract from 2000.
12. The claimant filed a response to the appeal. The appeal is contested on many grounds. The property belonged to the claimant's father N.L, who purchased it in 1966 and constructed a ground floor house in it. The claimant has active legitimacy as heir of the late N.L. The procedure, which was initiated by N.L.2 in 2009 in front of the Municipal Court is of no relevance and in addition to that this procedure was wrongfully stopped by the Court, because N.L.2 was not absent, she gave an address.

**Legal reasoning:**

13. The appeal is admissible. It has been filed within the period of 30 days prescribed in Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079.

14. The case falls in the scope of jurisdiction of KPCC and KPA Appeals Panel. It is directly related to the armed conflict. There is no dispute that until 1999 the property was possessed either by the Property Right Holder (the father of the claimant) or members of his family after his death and

that the property was abandoned in 1999 due to the armed conflict. Therefore the arguments related to a court dispute which was pending in front of a Municipal Court in 2009 are not relevant.

15. The appeal is ungrounded. The decision of the KPCC is correct; the Court finds neither incomplete establishment of facts nor erroneous application of the material or procedural law.
16. The active legitimacy of the claimant derives from her capacity of being a Member of the Family Household of the late Property Right Holder. In the proceedings before the KPCC the claim could have been filed either by the Property Right Holder in person or by a Member of his Family Household under the conditions established in section 5.2 of Annex I of Administrative Direction No. 2007/5 implementing UNMIK Regulation 2006/50 on the resolution of claims relating to private immovable property, including agricultural and commercial property, as amended by No. 03/L-079 (Hereinafter Law N0. 03/L-079). In that regard the Commission did not violate any procedural rule. For clarity it should be mentioned that art. 70 of the Law on Contested procedure is not applicable in the procedure in front of the KPCC, because the latter applies the procedural rules, established by Law N0. 03/L-079 and *mutatis mutandis* the rules of the Law on Administrative Procedure – argument after section 11.1 *ibid*. It is only the Supreme Court within the appeals procedure that applies the Law on Contested Procedure *mutatis mutandis* – argument after section 12.2 *ibid*.
17. The appealed decision is neither contradictory, nor incomprehensible as claimed in the appeal.
18. On the merits of the dispute it is not argued that the late N.L (the Property Right Holder) purchased the land in 1966 and built a house in it shortly after that. It is not disputed that the land has been in uninterrupted possession of the family of N.L since 1966 till 1999. It is also not disputed that the house build in the parcel has been in interrupted possession of the family of N.L from the moment of its erection and until 1999.
19. The dispute arises because in 2000, when the L. family was no longer present in Kosovo, the respondent purchased the property from a third person. However this contract cannot transfer any rights to the respondent because it was concluded with someone who was not an owner of the property and it is a basic principle in law that no one can transfer rights he/she does not possess *(nemo dat quod non habet)*. In 2000 S.V did not own this property in order to sell it to the respondent, therefore the latter did not acquire the ownership over it, regardless of the fact that he had paid for it to the one who has presented himself as an owner. The respondent, now appellant admits himself that he has proposed to the claimant to buy again the property but they could not reach an agreement regarding the price.

**Legal Advice**

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

***Sylejman Nuredini, Presiding Judge*** ***Elka Filcheva-Ermenkova, EULEX Judge***

***Willem Brower, EULEX Judge*** ***Urs Nufer, EULEX Registrar***