

**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-238/2013

**Prishtinë/Priština,
21 November 2014**

In the proceedings of:

Z. T.

Fushë Kosovë/Kosovo Polje

Respondent/Appellant

vs.

M.R.P.

Serbia

Claimant/ Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Esmā Erterzi, Presiding Judge, Willem Brouwer and Sylejman Nuredini Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPPC/D/A/203/2013 (case file registered at the KPA under the number KPA34661), dated 11 June 2013, after deliberation held on 21 November 2014, issues the following

JUDGMENT

1. The appeal of Z. T. against the decision of the Kosovo Property Claims Commission **KPPC/D/A/203/2013**, dated 11 June 2013, is accepted as founded.
2. The decision of Kosovo Property Claims Commission **KPPC/D/A/203/2013**, dated 11 June 2013 regarding the claim registered at the KPA under the number **KPA34661**, is annulled as rendered in the absence of jurisdiction.
3. The claim of the claimant is dismissed as inadmissible as it regards the claim registered at KPA under the number **KPA34661**.

Procedural and factual background:

1. On 3 December 2007, the Claimant M. R.P., in the capacity of the son of alleged property right holder, filed a claim with Kosovo Property Agency seeking confirmation of ownership right and repossession over the cadastral parcel no. 165/1, in the cadastral zone Vrella e Goleshit/Goleško Vrello, in the Municipality of Lipjan/Lipljan, in place called “Nën Golesh” with the surface of 7 ha 33 ar and 8 sq m. Together with the claim, he provided the Certificate for the Immovable Property Rights no. UL-71409016-276, issued by the Municipality of Lipjan/Lipljan, on 10 April 2007 indicating the name of the claimant’s mother J.V-Pas the co-owner of ¼ of ideal part of the cadastral parcel no. 165/1.
2. Later on in order to support his claim he submitted the following documents:
 - a copy of his Birth Certificate no.200-1/08-598-III-01 issued by Civil Registration office of the Municipality of Stara Pazova in Serbia on 20 June 2008 indicating J.V.-P. as his mother;
 - a copy of Death Certificate No.4-203-14/2007 issued by Civil Registration Office of the Municipality of Kursumlija, Serbia on 22 February 2007 indicating that his mother died on 23 January 2007;
 - a copy of the sketch drawing the location of the claimed property; and
 - Claimant’s ID card issued on 7 February 2000, Kursumlija-Republic of Serbia
3. The documents submitted by the claimant are verified by the KPA.
4. The claim was registered at the KPA under KPA34661. KPA notified the claim.
5. On 25 August 2011, the Respondent approached the KPA and claimed a legal right. He submitted:

- a written statement in which he stated that on 25 April 1996 he concluded the rental contract for the cadastral parcel no. 165/1 with N.V. as the sole owner and that he possesses the same since then; has witnesses which can testify that for 12 years he had undisturbly used in good faith the property; consider himself the owner of the property; he has the pre-emption right in case of sale of property.
 - a written statement dated 15 July 2011, which is repetition of the previous one, but with the only difference that he is willing to negotiate with the registered co-owners regarding purchasing the claimed property if their ownership rights are confirmed.
 - Second lease contract concluded on 4 September 1998 between him and N.V. giving him the right to use the property in 1999, 2000 and 2001, and obligation to pay the agreed price.
 - Respondent's ID card issued on 3 August 2010, Republic of Kosovo.
6. On 11 June 2013, the Kosovo Property Claims Commission (KPCC), through its decision KPCC/D/A/203/2013 established that Claimant's mother J. K. V.-P. is the owner of ¼ of the claimed property and that the claimant is entitled to possession of the said property. Justifying its decision, the KPCC underlined, as follows: *"Based on the evidence before it, and in the absence of a valid defence by the Respondent, the Commission finds that the claim stands to be granted in the name of the Claimant's mother as the property right holder"*.
7. On 18 September 2013, the Decision of the KPCC was served on the Claimant. On 19 September 2013, the Decision of the KPCC was served on Respondent. The Respondent filed an appeal on 24 September 2013.
8. The appeal was served on Claimant on 27 November 2013. He did not file a response to the appeal.

The allegations of the parties:

Respondent/Appellant

9. The Respondent/Appellant (*hereinafter the Appellant*) alleged legal right over the property stating that the property was sold/given to him by a third party. Subsequently, the Appellant claiming that he only recognizes N. V. as the owner of the claimed property. He asserted that he entered into lease agreement with N. V. in 1996. He further contested the Appellee's mother ownership right as he has been using the property in good faith for 12 years. He claims that 1998 N.V. as the owner of only ¼ of the claimed property offered him for sale his ideal part in a surface of 1 ha and that he purchased it. He also expressed willingness to negotiate with the registered co-owners regarding purchasing the land if their ownership rights are confirmed.

The Claimant/Appellee

10. The Claimant/Appellee (*hereinafter the Appellee*) alleges that his mother was the co-owner together with her brothers of the cadastral parcel no. 165/1. He stated that the claimed property was rectitude to his mother's family as the result of nationalisation of some other property. He claims that her mother lost the possession of it due to the conditions deriving from the armed conflict.

Legal reasoning:

Admissibility of the appeal

11. 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). The Supreme Court has jurisdiction over the appeal against the decision of the KPCC. The appeal is admissible.

Jurisdiction of the KPCC

12. According to Article 3.1 of the Law 03/L079, 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 is not only to provide as 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.
13. The Appellee provided Certificate for the Immovable Property Rights indicating that her mother- J. V-P [*hereinafter the Property Right Holder (PRH)*] is recorded as the co-owner of 1/4 of ideal part of the claimed property. This fact is contested by the Appellant stating that the real and the sole owner of the claimed property is the third person – N. V., and not the PRH. In fact N.V. is brother of the PRH, respectively uncle of the Appellee, registered as one of the co-owners over the disputed land.
14. The Appellant provided to the KPA as well as to the Supreme Court two rental contracts concluded with N.V. in 1996 (for the years 1996, 1997 and 1998) and 1998 (for the years 1999, 2000 and 2001) for using the claimed property. The agreed price for one year use of the claimed property was 600DM. The appellant states that when he concluded these rental contracts, no one was presented to him as co-owner of the claimed property, except N. V. In addition he notes that even after the armed conflict, no one had appeared before him as co-owner of a claimed property.

15. Based on the assessment of the case file, verified facts and allegations of the parties, the Supreme Court finds that the appellant concluded with N. V. the said rental contracts in 1996 and 1998. This is also supported by statements of the appellee and his wife given to the KPA on 21-21 May 2013, when they declared that the claimed property is administrated by N. V.
16. In addition to this, the appellee indicated that he was aware that the rental contract between N. V. and Appellant regarding the use of the claimed property was concluded in 1996. This is confirmed by the appellee's wife as well. She said that she was aware that N. V. concluded rental contract over the claimed property, but she does not know with whom. The Supreme Court also notes that neither the appellee nor his wife denied that another rental contract over the claimed property was concluded between Appellant and N. V. in 1998 (for the years 1999, 2000 and 2001).
17. Regardless of whether those rental contracts made between the Appellant and one of those co-owners are valid or not, the Supreme Court observed that the loss of possession of the land derives from contracts that were concluded before the conflict. The Claimant failed to show that the loss of the possession of the property derived from the condition related to the armed conflict. Thus, the dispute among the parties is a matter falling under the competence of ordinary courts which exceeds the specific jurisdiction and the competence of the KPCC.
18. The Supreme Court concludes that the Commission decided wrongly and unlawfully when rendered the appealed decision, since it had no jurisdiction over the claim. Therefore, the appellant's appeal is accepted, 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.
19. On the basis of the above and in accordance with Section 12.2 the UNMIK Regulation No. 2006/50, as amended by Law No. 03/L-079 and art 195.1 (b) of the Law on Contested Procedure.
20. This judgment has no prejudice to any party's to claim right over the property before the competent court in Kosovo.

Legal Advice

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

Esma Erterzi, EULEX Presiding Judge

Willem Brouwer, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar