

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-241/13

Prishtinë/Priština, 4 November 2015

In the proceedings of:

N. I.

Ferizaj

Appellant

Vs.

L. G. B.

Serbia

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Rolandus Bruin and Krassimir Mazgalov, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/R/197/2013 dated 18 April 2013 (case file registered at the KPA under No. 21718), after deliberation held on 4 November 2015, issues the following:

JUDGMENT

1. The appeal of the appellant N. I. filed against the Decision of the Kosovo Property Claims Commission KPCC/D/R/197/2013 (case file registered at the KPA under No. 21718), dated 18 April 2013, is rejected as unfounded.
2. The Decision of the Kosovo Property Claims Commission KPCC/D/R/197/2013 (case file registered at the KPA under No. 21718), dated 18 April 2013, is confirmed.

Procedural and factual background:

1. On 26 September 2007, the claimant L. G. B. filed a claim at the Kosovo Property Agency (KPA) seeking for the repossession of a parcel no. 939/18 with surface of 0.03.00 Ha with address Vuka Karadžica str. no. 32 in Ferizaj/Uroševac and a house with surface of 96 m² and garage with surface of 16 m², built on the same parcel. He stated that the property was lost due to the armed conflict, indicating 12 July 1999 as the date of loss. The claim was registered at the KPA under KPA21718.
2. The claimant provided the KPA with the following document to support his claim:
 - The Possession List no. 4067, dated 15 March 2002, issued by the Department for Cadaster, Geodesy and Property of the Municipality of Ferizaj/Uroševac (hereinafter: the Possession List).
3. From the Consolidated Report, dated 14 January 2010, results that the KPA verification team positively verified the Possession list no. 4067 and found the Certificate for the Immovable Property Rights no. UL-72217092-04067, dated 27 February 2008, and issued by Department for Cadaster, Geodesy and Property of the Municipality of Ferizaj/Uroševac. Both documents list the claimant as the owner of the claimed property.
4. The property in dispute in case KPA21718 was physically notified on 31 January 2008. From the notification results that on the parcel are reconstructed some garages, occupied by N.I
5. On 17 June 2008 N. I. approached KPA as a responding party. He signed a notice of participation claiming that the property was not used for residential purpose and that he has a legal right over it. He also stated that in 2007 he agreed with the claimant to purchase the claimed

property and that he already paid 9000 Euro per acre to him. He asserted that every action he undertook was with the knowledge of the claimant.

6. The respondent, N. I. did not provide any evidence to support his allegations.
7. With the Decision KPCC/D/R/197/2013, dated 18 April 2013, the Kosovo Property Claims Commission (KPCC) decided to grant the claim with the reasoning that the claimant provided the necessary evidences to support his claim.
8. The Decision was served on the respondent N. I. (hereinafter: the appellant) on 23 July 2013. On 29 July 2013, he filed an appeal against it. The decision was served on the claimant L. G. B. (hereinafter: the appellee) on 16 August 2013. The appeal was served on him on 11 December 2013. On 22 December 2013 he submitted before KPA a response to the appeal.

The allegations of the parties:

9. The appellant challenges the KPCC decision with the reasoning that the decision is not justified and is contradictory, because it is based on contradictory data and evidences. He asserts that he did not occupy the property, because he was using it with the consent of the appellee. He also states that he was interested to buy the claimed property and that the appellee proposed him to buy it for a price of 24 000 euros per acre and that he already paid to him 9000 euros per acre. Regarding to the allegations of the appellee about material damage on the house on the claimed property, the appellant states that allegation is not true, because the house was already burned and destroyed. Therefore he asks from the Supreme Court to annul the decision of KPCC and send it back for retrial.
10. The appellee in his response to the appeal confirms that he left Kosovo on 12 July 1999 and that before leaving he left the claimed property to the appellant **for preservation** by giving him the keys. He also stated that the appellant promised to him to buy the property for the price of 150,000 DEM (German Marks). Since the transaction is not done it remained a verbal agreement. He also admits that they could not reach an agreement because they have a disagreement related to the price that the appellant offers to pay for the property and the market price.

Legal reasoning:

Admissibility of the appeal

11. The appeal is admissible. It has been filed within the period of 30 days prescribed in Section 12.1 of the Law No. 03/L-079.

Jurisdiction

12. Pursuant to Article 3.1 of the Law no. 03/L-079, the Commission has competence to resolve claims related to the conflict of 1998/1999, which concern property rights that cannot be exercised due to circumstances directly related to **or resulting** from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.
13. In this particular case the claimant/appellee left the property due to circumstances resulting from the armed conflict: his house was burnt during the conflict. This fact is not disputed between the parties. The negotiations on purchasing the property started because the appellant was not only preserving the property on behalf of the appellee, but using it as his own. He built a wall around the parcel and built new garages. Therefore there is no doubt that the loss of possession of the property derives from the armed conflict and not from a dispute between the parties, since the dispute itself is a result of the loss of property due to the armed conflict.

Merits

14. The appeal is ungrounded. The allegations of the appellant about a prior agreement concluded between him as a buyer and the claimant/appellee as a seller of the property are unfounded. An essential element of a valid contract is missing in this case: a consensus on the price. The appellant's will to buy the property and the appellee's will to sell are not enough until there is no consensus on the price. Furthermore the parties did not sign a written contract.
15. The appellant did not deliver any evidences for paying anything to the appellee: in this respect there is only a declaration by the appellant, which cannot be considered as sufficient evidence. The consent of the appellee is limited only about preserving the property by the appellant. The appellant is not arguing that the appellee/claimant is the owner of the claimed property. However the latter cannot exercise his property rights by selling the parcel, because there is still loss of the property right and possession by another: the appellant.

16. Based on the reasons presented above pursuant to Section 13.3.c of the Law 03/L-079 and Article 200 of the Law on Contested Procedure, the KPCC decision is confirmed and the appeal is rejected as ungrounded.

Legal Advice

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

Sylejman Nuredini, Presiding Judge

Rolandus Bruin, EULEX Judge

Krassimir Mazgalov, EULEX Judge

Signed by: Urs Nufer, EULEX Registrar