

**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-139/12

Prishtinë/Prishtina

3 June 2015

In the proceedings of:

A. M.

Vushtrri/Vucitrin, Kosovo

Appellant/Respondent

vs.

M. R.

Vrnjacka Banja, Serbia

Appellee/Claimant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini Presiding Judge, Willem Brouwer and Rolandus Bruin, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/148/2012 dated 19 April 2012 (case file registered at the KPA under No. KPA 41350), after deliberation held on 3 June 2015, issues the following

JUDGMENT

1. **The appeal of A. M. against the decision of the Kosovo Property Claims Commission KPCC/D/A/148/2012 dated 19 April 2012 (case file registered at the KPA under No KPA41350) is rejected as unfounded.**
2. **The decision of the KPCC/D/A/148/2012, dated 19 April 2012, as it regards to case file registered at the KPA under No KPA41350, is confirmed.**

Procedural and factual background:

1. On 6 November 2007, M. R. (henceforth: the Claimant) filed a claim with the Kosovo Property Agency (KPA), as a member of the family household asking for repossession over the cadastral parcel no ... in the place called Zabran in cadastral zone of Resnik, in Municipality of Vushtrri/Vucitrin in the nature of forest with the surface of 1 ha 52 ar 50 m² (hereinafter the claimed property) and a compensation for the usage of the forest without an authorization and reimbursement of the damage in case the forest has been cut. The Claimant stated that the claimed property was registered in the name of his deceased mother and the possession over it was lost on 16 July 1999 due to the armed conflict in 1998/1999, that the claimed property was illegally usurped and the trees in the forest were cut.
2. To support his claim, he submitted *inter alia*:
 - The possession list no 58 issued by Republic's Geodesy Administration, Cadastre and Immovable Property Centre Vucitrn, showing the claimed property registered under the name of D. M. R.,
 - Death certificate of D. R., issued by Republic of Serbia on 19 July 2006, indicating the date of death as 7 July 1990,
 - Birth certificate of M. R. issued on 31 August 1955, indicating his mother's name as D. R.
3. The possession list in the name of Claimant's mother, the death certificate and birth certificate are positively verified by the KPA. The KPA verification report, dated 1 February 2013, reveals that the claimed property was found registered in the name of Claimant's mother D. R., according to the certificate issued on 7 November 2008, by Kosovo Cadastral Agency, number UL-70202054-00058.

4. On 13 June 2008, the KPA Notification Team went to the property and put up a sign notifying the claim. On 27 June 2008, the respondent filed a declaration contesting the claim and alleging ownership right over the property as he bought it from the Claimant's mother in 1986. He filed a notice of participation, as well.
5. To support his notice of participation, the respondent submitted:
 - a copy of his ID card issued by United Nations Interim Administration Mission in Kosovo on 29 May 2001 (positively verified);
 - a declaration made by him dated 27 June 2008 stating that the claimed property was bought in 1986; that D. R. and he agreed on the price in total 150.000.000 Dinars of which first part he paid on the very same date in the amount of 30.000.000 Dinars and the rest in autumn 1986; they did not conclude a written contract because it was forbidden to make a transfer of an immovable property between a Serbian and Albanian;
 - a copy of a possession list no 58 showing the claimed property registered under the name of D. R. (the Claimant's mother),
 - copy of the statements of witnesses Sh. C., I. M. and H. M. for the alleged transaction.
6. In response to the contestation of the respondent, the Claimant filed a written declaration, dated 8 June 2009, confirming that there was a sale contract made between his mother and the respondent. However, that contract did not include the claimed parcel which is in nature of a forest. He also submitted copies of recording in the saving account of claimant in Jugobank which does not correspond to the amount mentioned by the respondent. Even the depositor of the money transferred to this account is not noted.
7. On 29 March 2012, the KPCC held a hearing. The claimant, his lawyer, and two witnesses of the claimant, Mr. Sh. C. and I. M. were heard on the alleged purchase. The claimant did not participate in this hearing.

8. On 19 April 2012, the Kosovo Property Claims Commission (KPCC) with its decision KPCC/D/A/148/2012 granted the claim with regard to the part asking for repossession as the ownership was established. Whereas the part seeking for compensation, damage or loss of use was dismissed as inadmissible since this is not within the jurisdiction of the KPCC.
9. The Decision was served on the claimant on 17 October 2012 and on the respondent on 28 September 2012. The respondent filed an appeal before the Supreme Court on 19 October 2012 (henceforth: the appellant). The appeal was served on the claimant (with the service effected on D. R.) on 11 March 2013. No response to the appeal was received.
10. On 4 November 2013, the Supreme Court KPA Appeals Panel sent an order to the claimant/appellee giving an opportunity to respond to the allegation of the appellant, who claims that he had been using the land since 1986, and accordingly asking the appellee whether the loss of the possession of the claimed property derived from the armed conflict of 98/99, regardless of the existence or validity or legality of the alleged sale, which would have an effect on the jurisdiction of the KPCC.
11. On 7 April 2014, D. R. replied to the order of the Supreme Court KPA Appeals Panel. In the response, he was mentioned that the allegation of the respondent that possession was lost in 1986 but not due to the circumstances of the war in 1998/1999 is completely incorrect. He stated that the claimed property was used by M. R. freely until 1998/1999 and it had never been under the possession of the respondent. It is further mentioned that M. sold one parcel in 1986 to the uncle of A. M. and one field in village Nevoljane but they were completely different parcels and the respondent is using this chance to create an impression that he bought the parcel in question. She claims that the claimed property was never sold to anyone. As for the question of reason to the loss of possession, the following explanation was given:

“It happened for the following reasons: during year 1998 in the region where the property is located was a conflict between KLA on one side and army and police of SRY on the other side. That conflict culminated during NATO bombing in period of March- June 1999. For the previously mentioned

reason, it was not completely safe for M. R. to use his property. The precarious situation continued for him after month of June 1999. All citizens of Serbian and Montenegrin nationality from the region where the contested property is located were expelled from their houses and from their properties...”

Allegations of the parties

The appellant/respondent

12. The appellant in the notice of participation he filed while contesting the claim alleged that he and the claimant’s mother made an agreement in 1986 on the purchase of some immovable properties including the claimed one. He mentioned that no written contract was made as a transfer of an immovable property from a Serb to an Albanian was not allowed by the then applicable law in Kosovo. He referred to the payments made by him to Claimant’s mother in two parts: 30.000.000 Dinars and 120.000.000 Dinars in total 150.000.000 Dinars. In the absence of a written contract verified by a court on the alleged sale and the documents to show the payments, he relied on the witnesses’ statements to prove the purchase made.

13. In his appeal, he reiterated his allegations that he bought the claimed property from the registered owner without a written contract. He maintains that he should be considered as the owner as he paid the amount for the purchase. He alleges that KPCC rendered an erroneous decision while granting the claim to the claimant.

The appellee/claimant

14. The appellee claims that his mother is the registered owner of the claimed property which is denied by the appellant, either. He claims that his mother and his family lost the possession of the claimed property, due to circumstance of the armed conflict in Kosovo.

15. The appellee does not contest that an agreement on sale of some immovable properties was concluded between his mother and the appellant as well as with H. M., the uncle of the appellant. However, he alleged that the claimed property was never a part of that agreement but the appellant took over the possession of the forest after the conflict when appellee’s family had to leave Kosovo. He submitted the copies of

the records of his saving account where the payments were made in the Jugobank and declared that only the value of the forest would be 350.000.000 Dinars so that it could not have been a part of the deal between his mother and the appellant.

Statements of the Witnesses and the Appellant in the hearing

16. During the hearing held by KPCC, two witnesses were heard. Witness I. M. said that he does not know what the area was (*see page 5 of the minutes of the hearing*). He only remembers that a parcel was sold and some money was given to M. Witness Sh. C. also confirms a purchase was made stating that H. M. (the uncle of the appellant) bought the land together with the house. As for the forest D. was possessing, the witness states that Rr. and A. took that part.
17. The appellant responded to the question of the Commissioner, “Did anyone buy the forest?” “No, it was cut after the war” (*see page 3 of the minutes of the hearing*).

Legal reasoning

Admissibility of the appeal

18. 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.

Merits of the appeal

19. Following the review of the case file and appellants allegations, pursuant to provisions of Article 194 of LCP, the Supreme Court found that the appeal is unfounded.

As to the registered owner

20. The claimant presents a possession list indicating that the claimed property (in the nature of forest) is registered under his mother’s name (D. R.). This is positively verified by the KPA. Furthermore, the Certificate on immovable property rights UL-70202054-00058, dated 7 November 2008, issued by the Cadastral Office in Vushtrri/Vuitrin, constitutes that the claimed property is registered under the name of D. R. Therefore, based on such factual ascertainment, it indubitably follows that pursuant to Article 20 of the Law on Basic Property Relations, respectively Article 36

of the Law on Property and Other Real Rights, the property rights holder over this claimed property is D. R., as is stated in the certificate issued by the Cadastral Agency.

As to the allegation of purchase

21. The Appellant does not contest that D. R. is stated as owner in the certificate but maintains that regardless of a written contract, which could not be concluded by then due to the laws in force, there was a purchase made between him and the registered owner orally.
22. In this regard, the Supreme Court recalls Article 4, paragraph 2 of the Law on Transfer of Immovable Properties (Official Gazette of R.S.no.43/81), Article 20 of the Law on Basic Property Relations, as well as Article 36 of the Law on Property and Other Real Rights. According to these legal provisions, in order to acquire ownership of an immovable property, it is necessary to have a sales contract in writing that is legalised by a competent body such as courts or notaries, which is lacking in the concrete case. The appellant admits the he does not have a written contract so obviously it cannot be verified by the competent court, either. The formality of the law to acquire ownership over an immovable property is lacking in the concrete case. Therefore, the appellant's allegations are contrary to the said legal provisions, and consequently unfounded.
23. The witnesses heard could testify that appellant bought some land from he claimant's family but they do not know about the exact content of the purchase made. The claimant maintains that the claimed parcel, which is a forest, was not included in the said purchase. More importantly, the appellant himself during the hearing held by the KPC, declared that the forest was not included in this purchase orally made.

As to the appellant's allegation of being in possession since 1986

24. The appellant could not provide any evidence to show that he was in possession of the claimed parcel since 1986. The claimant provides a very clear explanation how the possession of the property is lost and links it with the armed conflict with reasonable explanations. Accordingly, the allegation of the appellant that he was in possession of

- the said property since 1986 which would lead if proven that the KPCC lacks jurisdiction cannot be verified.
25. Therefore, the appealed decision neither contains any essential violations nor any erroneous applications of material and procedural law.
26. In regard of the Appellant request to be built a house for him the KPA Appeals Panel of the Supreme Court has no jurisdiction over such request accordingly this claim is dismissed.
27. Therefore, the appeal has to be rejected as in the enacting clause of this judgment pursuant to Section 13.3 (c) of UNMIK Regulation 2006/50 amended by the Law no 03/L-079.

Legal Advice

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.

Sylejman Nuredini, Presiding Judge

Rolandus Bruin, EULEX Judge

Willem Brouwer, EULEX Judge

Urs Nufer, EULEX Registrar