

**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-264/13

**Priština/Prishtinë,
16 July 2014**

In the proceedings of:

1. A.M

2. I.J

Appellant

vs.

M.P

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Dag Brathole and Willem Brouwer, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/170-2012 dated 24 October 2012 (case file registered at the KPA under No. KPA50016), after deliberation held on 16 July 2014, issues the following

JUDGMENT:

1. The appeals of A.M and I.J are accepted as grounded.
2. The decision of the Kosovo Property Claims Commission KPCC/D/A/170-2012 dated 24 October 2012 (case file registered at the KPA under No. KPA50016), is annulled and the case is returned for reconsideration.

Procedural and factual background:

1. On 25 September 2007 M.P filed a claim at the Kosovo Property Agency (KPA) seeking ownership and repossession of 50 % of parcel no. 311, 14 662 m², 4th class field, Lubizhdë/Ljubižda cadastral zone, possession list 294 issued by the Serbian Geodesic Institute, Centre for Cadastre of Immovable Property Prizren (dislocated) on 7 February 2004. According to the possession list an ideal ½ of parcel no. 311 was owned by M.D. Z., Lubizhdë/Ljubižda. The other half of the parcel was owned by ONI.OU.PPK.PROGRES.
2. The same information is given in Possession List no. 294 issued by the Department for Cadastre, Geodesy and Property of Prizren on 19 July 2007.
3. A notification of the claim was made by placing a sign on the property on 20 June 2008. The property was cultivated by unknown person(s).
4. No respondent party took part in the proceedings before the Kosovo Property Claims Commission. After an uncontested procedure the KPCC on 24 October 2012, awarded the claim.
5. It follows from the information presented by the Secretariat of the KPCC that the KPCC found that M.P had showed that he had used both P. and Z. as surnames. The KPCC was satisfied that P. owned ½ of the property under the name Z..
6. The KPCC decision was served on M.P on 27 February 2013.

7. On 23 July 2013 A.M submitted an appeal against the decision made by the KPCC, claiming to be an interested party. On 26 July 2013 I.J submitted an appeal, also claiming to be an interested party. The appeals were served on M.P on 27 November 2013. He filed a response to the claim on 17 December 2013. The Supreme Court received the case file on 7 April 2014.

Allegations of the parties

8. A.M and I.J have given reasons for their appeals which for practical purposes are the same. Their allegations are therefore treated together.
9. M./J. allege that the KPCC decision contains substantial violation or serious misapplication of the applicable material or procedural law and is based on erroneous or incomplete determination of the facts.
10. M.P has been co-owner of parcel no. 311 an ideal ½ ownership. The other half of the property was owned by NSH KBI “PROGRES REPORT”. This is not contested. However he owned the property under another name, M.Z.
11. M.P and M.Z is the same person, with personal no. 1902941950016.
12. On 25 August 2008 P., under the name Z., authorized L.K to conclude a contract of sale to the appellants, A.M. Based on this power of attorney, L.K on behalf of P.(Z.), sold 1/2 of parcel 311 to M. on the same day. This sale has been registered in possession list no. 294, and the sale has been verified at the Municipal Court of Prizren by registration no. 5569/2008. M. is registered as owner in accordance with Certificate on property right hold no. UL-71813046-00294 dated 2 November 2009.
13. On 21 October A.M has sold a part of his property, ¼ of parcel no. 311, to I.J, who is the second appellant in the case. The sale has been verified by the Municipal Court of Prizren. This sale has been registered in the cadastre, and J. is a registered part owner of parcel 311 according to Certificate on immovable property right hold UL/71813046-00294 dated 7 May 2010.

14. Accordingly the decision of the KPCC is incorrect. M./J. has requested that the Supreme Court should find the appeal grounded and that the decision of the KPCC should be annulled.
15. M.P has alleged that the appeals of J. should be rejected because M. and J. were not party to the proceedings before the KPCC. Although the response only addresses the appeal of I.J directly, it follows from the context that P. opposes both appeals.
16. It follows from Art. 10.2 of the UNMIK Regulation 2006/50 on the Resolution of Claims relating to Private Immovable Property, including Agricultural and Commercial Property as amended by Law No. 03/L-079 (*hereinafter Law No. 03/L-079*) that a response to a claim must be made within 30 days after notification of the claim. J. did not respond to the claim within the time limit set. It follows from Art. 12.1 of Law No. 03/L-079 that only a party may submit an appeal. I.J was not a respondent party before the KPCC, and accordingly his appeal has to be dismissed.
17. In the event that the Supreme Court does not dismiss the claim, M.P alleges that the property was never subject of sale. He has never authorized the sale of the property. The Power of Attorney allegedly authorizing L.K to sell the property is a forgery. P. never had an ID card in the name of M.Z. In the alleged contract it is stated that M.Z is from Smederevo , where P. has never lived. This confirms that the ID card is a forgery.
18. P. alleges that Art. 1 of Protocol 1 to the European Convention on Human Rights (ECHR) guarantees him the right on peaceful enjoyment of the property. According to Article 22 of the Constitution of the Republic of Kosovo this Article is directly applicable in the Republic of Kosovo with priority over provisions of law and other acts of private institutions.
19. As a conclusion P. states that he has proven his co-ownership over the property, and that he lost his right due to the circumstances directly related to or resulting from the armed conflict. He asks that the appeal should be dismissed or rejected.

Legal reasoning

Admissibility of the appeal

20. According to Section 12.1 Law No. 03/L-079, a party may submit an appeal within thirty (30) days of the notification of the decision.

21. The appellants, M. and J., were not a party before the proceedings in KPCC. The claim was uncontested at first instance level.
22. The Supreme Court has in several cases stated that an interested party who was not aware of the proceedings before the KPCC due to lack of notification, is allowed to appeal the KPCC decision.
23. In case GSK-KPA-A-23-2013, which also was a case concerning lack of proper notification, the Supreme Court referred *inter alia* to Art. 10.3 in Law No. 03/L-079 which provides the rule that: “A person with a legal *interest in the claim who did not receive notification of a claim may be admitted as a party at any point in the proceedings.*” The Supreme Court in this case found that the appellant “*became a party to the proceedings as soon as he became aware of the claim*”, and found the appeal admissible even though the appellant had not been a party to the proceedings before the KPCC.
24. In the present case there was no deficiency in the process of notification. The reason the appellants were unaware of the claim, is that they allegedly made their purchases at a later time, unaware of the claim. However the purchases, on which they base their claims, were made before the KPCC made its decision.
25. A decision by the KPCC may be executed by the KPA in accordance with Chapter V of Law No. 03/L-079. The threat of execution of the KPCC decision, eventually by eviction, makes it clear that those claiming to have bought the property, here M. and J., have a legal interest in appealing the decision of the KPCC.
26. The Supreme Court finds that the situation of M. and J. is similar to that of the parties who were unaware of the proceedings before the KPCC because of insufficient notification. In accordance with its jurisprudence the Supreme Court therefore finds the appeals from M. and J. admissible.

The merits

27. The Supreme Court initially notes that the registered owner of the disputed property at the time the claim was made, was M.Z. However the KPCC found that M.P was the same man as M.Z and awarded the claim to the claimant under the name M.P.

28. The Supreme Court further notes that M claims to have bought the disputed property from M.P, under the name M.Z, in 2008. J. alleges that he bought his part of the disputed property from M..
29. M.P alleges that the Power of Attorney on which the sale was based, and the identification given when the Power of Attorney was given, are false.
30. In order to decide whether M.P /M.Z sold the disputed property to M. in 2008, is a factual matter that requires a thorough study and verification of the submitted documents. Such verification must be made by the KPA, allowing the KPCC to review the claim in light of the new evidence, so that the case can be tried in two instances.
31. The KPA is obliged to request from the claimant to submit evidences made by a competent administrative body regarding the verification of the surname of the claimant.
32. On the basis of the above and in accordance with section 12.2 of Law 03/L-079 and art 195.1 (c) of the Law on Contested Procedure the Court decided as in the enacting clause.

Legal Advice

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

Sylejman Nuredini, Presiding Judge

Dag Brathole, EULEX Judge

Willem Brower, EULEX Judge

Urs Nufer, EULEX Registrar

