

SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA

KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË AKP-ës
ŽALBENO VEĆE KAI

GSK-KPA-A-75/13

Prishtinë/Priština, 7 February 2014.

In the proceedings of:

1. R. M.
2. I.D.
3. S.D.
4. M. Z.
5. M1.Z1.
6. M.B.
7. A.K.
8. A. D.
9. R. J.
10. S. N.
11. T. D.
12. I. D.

all with address

Pejë/Peć

Appellants

vs.

S.R.M.

Serbia

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Elka Filcheva-Ermenkova, Presiding Judge, Dag Brathole, and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/133/2011 (case file registered at the KPA under the number KPA6500) dated 7 December 2011, after deliberation held on 7 February 2014, issues the following

JUDGMENT

- 1. The appeal is founded.**
- 2. The decision of the KPCC/D/A/133/2011 (case file registered at the KPA under the number KPA06500) dated 7 December 2011 is annulled and sent back to the KPCC for reconsideration.**

Procedural and factual background

1. On 24 January 2007 S. R. M. filed a claim with the Kosovo Property Agency (KPA), seeking ownership of parcel nr. 4287 in the cadastral district of Pejë/Peć in the municipality of Pejë/Peć. The property has an area of 88 ar and 27 m². The claim was made as a family member of her father, R. M., who was stated as the Property Right Holder of the entire property. R. M. died on 16 August 2006. With the claim S. R.M. submitted a decision from the Municipal Court in Kragujevac dated 9 August 2007, where it is stated that she has inherited 1/5 of the contested property.
2. With its decision KPCC/D/A/133/2011 dated 11 June 2009, the Kosovo Property Claims Commission (KPCC) awarded the claim as uncontested.
3. On 24 May 2010 with resolution KPCC/RES/20/2010 the KPCC rescinded decision KPCC/D/A/42/2009 dated 11 June 2009 and referred the case back to the Executive Secretariat for further processing based on a correct identification and proper notification of the claimed property, and a hearing of any respondents to the claim.

4. On 24 September 2009 the claim was notified through publication in the KPA Notification Gazette no 9 and the UNHCR property office BULLETIN. The publication was also placed in the corner of the public road in the entrance and in the exit of this part of Pejë/Peć.
5. On 7 December 2011 the KPCC awarded S. R. M. the ownership of 1/5 of the claimed property as uncontested in cover decision KPCC/D/A/133/2011. In paragraph 15 of the decision, which according to the Certified Decision dated 28 February 2012 applies specifically to the claim, it is stated that in this group of claims the claimant was not the owner at the time of possession, but has submitted evidence of having subsequently succeeded to ownership
6. The decision was served on S.R. M. on 19 April 2012
7. On 24/26 February 2013 R. M., I. D, S. D, M. Z., Mq1. Z1, M. B., A. K, A.D., R. J., S.N., T.D, and I.D. appealed the decision to the KPA Appeals Panel of the Supreme Court.. The appeal was served on S.R. M. on 5 July 2013. She responded to the appeal on 29 July 2013. The Supreme Court received the case-file on 21 January 2014.

The allegations of the parties

8. R.M., I. D., S.D., M. Z., M1. Z1, M. B., A. K., A.D., R. J., S. N., T. D., and I.D. (the appellants) allege that parcel nr. 4287 was sold on 15 October 1974 to R. M.. M. subsequently sold parcels of the property to the appellants.
9. The appellants have constructed dwelling houses on the property from 1977 until today. They have never been hindered by the seller's family or by others for that matter.
10. The sale of the property was never legalized for "known reasons".
11. The case is not within the jurisdiction of the KPCC according of 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*)
12. S. R.M. claims to be the owner of 1/5 of the disputed property based on the law. She did not specify the names of the usurpers because she did not know who they were.
13. The appellants, if they wish to challenge the decision of the KPCC, have to provide legal basis for transfer of ownership rights such as certified sales contract, certified contract of gift, certified long-life annuity contract, final decision on inheritance etc. They have not done so, although they claim that a purchase was made in 1974, at a time when Pejë/Peć was a city with developed municipal administration for the certification of documents.

14. S. M., who allegedly sold the property on 15 October 1974, was never the owner of any part of the property, and was therefore in no position to sell the property. M. has stated that he purchased the property from L. M., but the appellants claim that R. M. sold them the property.
15. Invoices for electricity and other utilities are irrelevant as to the determination of ownership, because they may be addressed to a lessee, user, etc.
16. In the appeal there is not presented any legal basis for the transfer of ownership. This is the reason why the appellees have not been able to register any ownership into the cadastral registry.

Legal reasoning

17. The appellants were not parties to the proceedings before the KPCC. The Supreme Court therefore has to consider whether their appeal is admissible.
18. In this case a notification of the claim was first made on the wrong property. For this reason the KPCC decision of 11 June 2009. was rescinded on 24 May 2010. The claim was then notified through publication in the KPA Notification Gazette no 9 and the UNHCR property office BULLETIN. The publication was also placed in the corner of the public road in the entrance and in the exit of this part of Pejë/Peć.
19. The Supreme Court usually deems such notification by publication as insufficient because it does not constitute “reasonable efforts” to notify any other person who may have a legal interest in the property, ref. Section 10.1 of Law No. 03/L-079. The Supreme Court refers to GSK-KPA-A-60/11 as an example.
20. There is no reason to make an exception to the Supreme Court’s jurisprudence in the present case. The appellees have stated in the appeal that they were unaware of the claim and of the decision made by the KPCC. The Supreme Court cannot exclude that this unawareness is due to the insufficient notification.
21. The appellants have therefore to be accepted as parties to the claim, and their appeal has to be accepted as admissible.
22. As in case GSK-KPA-A-60/11 the Supreme Court considers the insufficient notification to be a “serious misapplication” of Section 10.1 of Law No. 03/L-07, ref section 12.1 of the same law
23. After the appeal and response have been made, the facts to be examined and adjudged have changed completely compared to the situation when the KPCC made its decision. The appellants allege that the property was sold in 1974, and that they have all built their houses on the property on their own land. They also claim that the dispute has no connection with the armed conflict that occurred between 27 February 1998 and June 1999. The respondent maintains that she has inherited the

property, that the appellants have no right to the property, and that she lost possession of the property as a result of the conflict.

24. These allegations have to be reviewed and the submitted documents verified. As stated in GSK-KPA-A-60/11, the parties have a right to be heard by two instances.

25. Consequently, the case has to be sent back for reconsideration and decision. Pursuant to Art. 195.1 (c) of Law No. 03/L-006 on Contested Procedure, which is applicable *mutatis mutandis* in accordance with Art. 12.2 of Law No. 03/L-079.

Legal Advice

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

Elka Filcheva - Ermenkova, EULEX Presiding Judge

Dag Brathole, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar

