

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-96/2015

Prishtinë/Priština,

20 September 2017

In the proceedings of:

M. (S.) P.

Appellant

Vs.

Nobody

Respondent

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Beshir Islami, Presiding Judge, Krassimir Mazgalov and Judge Shukri Sylejmani members, on the appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/R/247/2014 dated 18 June 2014 (case file registered at the KPA under the number KPA21668), after the deliberation held on 20 September 2017, issues the following:

JUDGMENT

1. **The Appeal of M. P. against the Decision of the Kosovo Property Claims Commission KPCC/D/R/247/2014 dated 18 June 2014 is rejected as ungrounded.**
2. **The Decision of the Kosovo Property Claims Commission KPCC/D/R/247/2014 dated 18 June 2014, regarding the case KPA21668 is confirmed.**

Procedural and Factual Background

1. On 27 August 2007 M. P. (henceforth: the Appellant), filed a Claim with the Kosovo Property Agency (KPA), seeking repossession over a single-room apartment located in “Car Dušan” St. no.79, 2nd floor, Apartment Nr.5 with a surface of 53 square meters (henceforth: the claimed property) alleging that it belonged to his late father. The Claim was registered at the KPA under the number KPA21668.
2. The Appellant alleges that his late father S. P. acquired ownership right over the stated property after he had purchased it in 1993 from the Government of the Republic of Serbia.
3. To support his Claim, the Appellant submitted the following documents:
 - The Sales Contract Ov. Nr. 11473/93 dated 16 December 1993, concluded between the Republic of Serbia as seller and the Appellant’s father as buyer, before the Second Municipal Court in Belgrade;
 - A Death Certificate issued by the parallel Municipality of Deçan/Decani dislocated in Jagodina, Serbia, on 21 September 2007, proving that S. P. passed away on 2 March 1998;
 - A hand drawing of the location of the claimed property;
 - Appellant’s ID Card issued on 29 January 2007 by the parallel authorities of Serbia.
4. On 30 January 2008, the KPA preformed the notification of the Claim by placing a notification poster on the claimed property and it found that the property is vacant and uninhabitable because it has been damaged to the extent that it could not be used for accommodation. Nobody responded to the notification on the Claim.
5. Based on the Consolidated Verification Report, dated 16 February 2012, the KPA concluded that the documents attached in support of the Claim could not be found and the verification

was negative also before the Court in Belgrade. The KPA contacted the Appellant several times and asked him to present additional evidence which proved his ownership or possession right over the claimed property before or during the conflict but he failed to do so. Finally, on 30 May 2014 the KPA contacted the Appellant and he confirmed that the property had been sold by other family household members and that he wanted to know only the sales price. According to the Appellant, the apartment had been sold by his stepmother M. P. and her son N. When asked by the KPA officials if he wanted to withdraw his Claim he responded negatively.

6. On 18 June 2014, the Kosovo Property Claims Commission (henceforth: the KPCC) in its confirmed Decision KPCC/D/R/2247/2014, rejected the Claim. In the reasoning of its Decision (paragraphs 16 and 17), the KPCC found that the Claimant or his family household members had sold the property and did not lose possession as a result of the conflict but rather as a result of a transaction, thus this matter falls outside the KPCC's jurisdiction. Therefore, the Claim is dismissed.
7. The KPCC Decision was served on the Appellant on 17 October 2014. On 5 November 2014 the Appellant filed an appeal against the KPCC Decision.

Allegations of the Appellant:

8. The Appellant did not challenge the KPCC's Decision but rather challenged the KPA's document verification procedures and expressed his disbelief about the lack of documentation in the Court in Peja/Pec on the apartment's sale although the contract was concluded in Belgrade. Furthermore he alleges that the apartment is located in Deçan/Decani whereas the sale or alienation by his family household members was executed in Montenegro and as the first child of the property right holder he was excluded from sale and prevented from enjoyment of his inheritance right. Therefore, despite unlawful actions of his family household members he still considers himself as owner of the property which belonged to his late father.

Legal reasoning

9. After reviewing the case file documents and allegations of the Appellant, pursuant to Section 12 and 13 of the UNMIK Regulation 2006/50, as amended by Law no. 03/L-079, and Article 194 of the Law no. 03/L-006 on Contested Procedure, the Court found that the Appeal is admissible. It has been filed within the period of 30 days as provided by Section 12.1 of the UNMIK Regulation 2006/50, as amended by Law no. 03/L-079.
10. According to Section 3.1 of the UNMIK Regulation 2006/50 as amended by Law no. 03/L-079, the Appellant has a right to an order from the Commission for repossession of the property if he not only has established his ownership or use right over the claimed property but also that he now is unable to exercise such property rights over the respective property because of the circumstances directly related or which resulted from the armed conflict that has occurred in Kosovo between 27 February 1998 and 20 June 1999.
11. The Appellant basis his ownership right on the right of his late father. He does not deny the transaction made by his stepmother and half-brother but he challenges the fact that the sale was done without his knowledge and participation.
12. As such, the Supreme Court considers that it has not been proven that the stated property was a property of the Appellant immediately before the conflict and that there is no evidence to have been in possession of the Appellant and lost as a result of the conflict. Therefore, the KPCC's conclusion that the property cannot be subject of an order for acquiring the ownership right and repossession is correct because the Appellant failed to prove that the property belonged to him and that he was using it before or during the conflict or that he has lost it as a result of the conflict.
13. The Supreme Court considers the KPCC's conclusion that the Appellant has failed to establish his ownership right and its loss immediately before or during the conflict of 1998-1999 as correct. For the same reason the Claim has been dismissed as falling outside the KPCC's jurisdiction because the property has been alienated by the Appellant's family household members.
14. Finally, the Supreme Court of Kosovo concluded that the challenged KPCC Decision was issued following a complete and correct determination of the factual situation, and on the same basis the material and procedural right have been correctly applied.
15. In light of the above and pursuant to Section 13.3 under (c) of the UNMIK Regulation 2006/50, as amended by Law no. 03/L-079, it was decided as in the enacting clause of this Judgment.

Legal Advice:

Pursuant to Section 13.6 of the UNMIK Regulation 2006/50, as amended by Law no. 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Beshir Islami, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Shukri Sylejmani, EULEX Judge

Bjorn Olof Brautigam, EULEX Registrar