

**SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA**

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
AGJENCIONI KOSOVAR PËR PRONA, KOLEGJI I APELIT TË AKP-së
KOSOVSKA AGENCIJA ZA IMOVINU, ŽALBENO VEĆE KAI**

GSK-KPA-A-204/15

**Pristina
24 January 2018**

In the proceedings of:

J. F,

Appellant

Vs.

A. G., J. G. and N. G.

A. H. and R. H.

Appellees

KPA Appeals Panel of the Supreme Court of Kosovo, composed of Beshir Islami, Presiding Judge, Krassimir Mazgalov and Shukri Sylejmani Judges, deciding on the appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/A/236/2014 (case is registered in KPA under KPA14528&KPA15001&KPA54908), dated 30 April 2014, after deliberation held on 24 January 2018, issues this:

JUDGMENT

1. The appeal filed by J. F. against the Decision of the Kosovo Property Claims Commission KPCC/D/A/236/2014, dated 30 April 2014, as far as related to the claims registered with the Kosovo Property Agency under KPA14528&KPA15001&KPA54908 is rejected as ungrounded.
2. The Decision of the Kosovo Property Claims Commission KPCC/D/A/236/2014, dated 30 April 2014, as far concerned the claims registered with the Kosovo Property Agency under KPA14528&KPA15001&KPA54908 is confirmed.

Procedural and factual background

1. On 11 March 2006, R. U. (*hereinafter: claimant 1*) filed the claims no KPA14528 and KPA15001 (two identical claims for the same property) with Kosovo Property Agency (*hereinafter: KPA*), seeking re-possession of cadastral parcel no.313, with a surface of 1.08.37 ha, located at the place called “Pored druma”, Dushanovë/Dusanovo, Municipality of Prizren/Prizren (*hereinafter: the claimed property*), stating that her deceased father A. A. was the owner and had lost the possession as a result of circumstances related to the armed conflict and that the property was occupied.

VI. A. (*hereinafter: the claimant 2*) had filed with KPA the claim KPA54908, competing with two initial claims for the same property by stating that his deceased grandfather A. A. was the owner and that he had lost possession as a result of circumstances related to the armed conflict, whereas now the property was occupied.
2. The KPA Secretariat had merged the two doubled claims and referred them to the KPCC as related.
3. Together with the claim, Claimant 1 provided the KPA *inter alia* with the following documents:
 - Copy of the Possession List no. 372, issued by the Municipal Directorate of Geodesy in Prizren/Prizren on 22 October 2001, displaced to Serbia, which shows that A. A. was the owner of the claimed property.
 - Copy of the Judgment of the District Court in Prizren/Prizren GZ.Nr.407/95 confirming the Judgment of the Municipal Court in Prizren P.Br. 696/94 (*unreadable*).

- Death Certificate, issued by the Municipality of Kragujevac on 7 September 2000, proving that A. A. died on 27 July 1999 in Kragujevac.
 - Birth Certificate, issued by the UNMIK Administration on 21 July 2006, proving that Claimant 1 is A.A. daughter.
 - Marriage certificate issued by the UNMIK Administration in Prizren on 21 July 2006 proving that Claimant 1 R. U. was married and her maiden name was A. and U. when married.
4. Together with the claim, V. A. provided the KPA *inter alia* with the following documents:
- Possession List similar to the Claimant 1 that prove that property in cadastral records in Serbia was registered in the name of A. A..
 - Birth certificate proving that Claimant 2 is the son of Ž. A. and the nephew of A. A.
 - Death Certificate of 22 December 2005 which proves that father of Claimant 2 Ž. A. died and that this proves the family relationship with Claimant 2.
 - Ruling of the Municipal Court in Kragujevac O.br. 837/2000 of 22 July 2002, which terminates the inheritance proceedings for the property of the deceased A., and all parties, including Claimant 1 and Claimant 2's father, are instructed to civil litigation.
5. The KPA Executive Secretariat visited the property on 4 September 2008 and on 19 March 2010. On 4 October 2013, it was ascertained that the property was identified on the basis of GPS coordinates and it was found that the property was occupied by some persons who stated that they claim property rights over this property.
6. A.G. signed the notice of participation in the proceedings on 8 September 2008 and stated that he purchased the claimed property from Andrija.
7. To support his allegations, he submitted the following documents:
- The Contract on Sale concluded between A. A. (represented by A. H. based on Power of Attorney certified before Kragujevac Municipal Court) and G. Family from Hatmaxha of Prizren. The contract was certified by the Municipal Court of Prizren with number Leg.Nr.2439/2002 dated 3 June 2002.
 - Possession List No.372 issued by the Municipality of Prizren on 19 June 2002 proving that changes were made at the cadastral records and now the claimed property is listed as the co-ownership of the ideal part of $\frac{1}{4}$ of buyers F., H., T. and N.G..
 - A statement certified by the Municipal Court in Prizren, by which the brother of Claimant 1 D. A. confirms that he sold the claimed property to the buyers for the amount of 124,300.00 German Marks and that he divided the purchase price money into equal parts and submitted to them in the presence of witnesses. The statement was given personally at the Municipal Court of Prizren and was certified under Vr.No.6023/2008 on 12 December 2008.

- Specification of banknotes, sums and persons paying and the signatures of the recipients D. A. and N. P.
 - Power of Attorney given by A. A. on 27 March 2002 certified at the Municipal Court in Kragujevac with the number 4021/2002 authorizing A.G. to sell the claimed property.
8. A. H. signed the notice of participation in the proceedings on 7 October 2013 and stated that he purchased the claimed property from sellers the G. family.
 9. To support his allegations, he provided the following documents:
 - Certificate for Immovable Property Rights proving that parcel 313, respectively the claimed property, is listed in the co-ownership of F, H, T and N. G.
 - Power of Attorney not certified in Court by which, in the presence of two witnesses, A. A. authorises D. A., his son, to dispose of the claimed property.
 - Receipt drafted on 20 May 2006 in Kragujevac, which by their signatures in the presence of witnesses, all potential inheritors, after the death of the deceased A. A., among whom also V. A., father of Claimant 2, have received 1/6 of the selling price of the property and this money was submitted them by Claimant 1.
 10. Other appellees brought cadastral documents proving that parcel 313 was divided into smaller parcels and sold by the G. family to the appellees. Documents prove the cadastral changes for a part of parcel 313, which was divided into smaller parcels according to the purchase contracts.
 11. According to the Verification Report dated 02.04.2013, the claimed property was found registered in the Cadastre in the name of the H. family as co-ownership over 1/4 of the ideal part. Power of Attorney given by A. A. to A. H. was not found in the Court of Kragujevac and the verification was negative because the "authorizer" had died in 1999 and the authorization resulted to be forged.
 12. On 30 April 2014, the KPCC with its Decision KPCC/D/A/236/2014 (hereinafter: "KPCC Decision", "Decision") dismissed the Claim because of the fact that it fell outside the jurisdiction of the Commission, since the possession of the claimed property was not lost as a result of the armed conflict that had occurred in Kosovo during 1998-1999.
 13. R. U.- Claimant 1 died on 27 September 2007 in Kragujevac. The KPCC decision was served onto the claimant's son Jovica Ušević on 3 November 2014. J. F., daughter of Claimant 1 (hereinafter: the appellant), filed an appeal on 28 November 2014.
 14. All the appellees received the appeal: R. and A. H. on 27 July 2015 and A, J. and N. G. on 6 August 2015. A. and T. G. submitted a response to the appeal on 10.08.2015, while A. and R. H. on the same day on 10 August 2015. The other appellees did not file responses to the appeal.
 15. In the case file submissions, there is no evidence that Claimant 2 V. A. or any authorised person - family members have filed an appeal to the decision.

Allegations of the appellant

16. The appellant states that the purchase contract was concluded on the forgery of the authorization because according to him, the property had been sold by her uncle Djurdje Claimant 1 without any right, because the inheritance proceedings had been terminated and the property of her grandfather Andrija Andrijevic was not divided among the inheritors. She claims that neither A. G. nor Djurdje Andrijevic could dispose of the property and could not sell it because they were not the owners. For the reasons outlined above, she requests from the Court to quash the decision of the KPCC and to decide that the property belongs to her as the legal successor of the owner and the claimant.

Allegations of the appellees

17. The appellees, as in the first instance proceedings, had claimed legal rights-ownership over the claimed property based on the purchase contract. They reiterated the same claims and motioned the Supreme Court to reject the appeal.

Legal reasoning

18. After reviewing the case file submissions and allegations of the appellant, pursuant to Section 12 and 13 of 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 was filed within a period of 30 days as provided by Section 12.1 of UNMIK Regulation 2006/50 as amended by Law no. 03/L-079. The appellant has proven that she is a household member of the claimant's family in accordance with the provision of Article 1, paragraph 12, of the Administrative Instruction no.2007/5 on the Implementation of UNMIK Regulation no.2006/50 on the Resolution of Claims related to private immovable property, including agricultural and commercial property, as amended by Law no.03/L-079 pertaining to the definition of *"member of the family household" means the spouse, children (born in and out of wedlock or adopted) and other persons whom the property right holder is obliged to support in accordance with the applicable law, or the persons who are obliged to support the property right holder in accordance with applicable law....."*
19. The Supreme Court, after examining the allegations in the appeal and the content of the case file, found that the KPCC Decision does not contain any substantial errors or misapplication of the substantive law in force and neither does it rely on erroneous and incomplete determination of facts. Therefore, the appeal cannot be approved.
20. According to Article 3.1 of Law no.03/L-079, KPCC has the competence to resolve conflict-related property claims that are "directly related to the armed conflict that occurred between 27 February 1998 and 20 June 1999 or result from the circumstances related to the

conflict”. The property was lost as a result of a transaction in 2002, even though the appellant alleges that this was without the consent of other potential inheritors. If the Commission establishes that the possession of the claimed property was lost before or after the dates mentioned above or that the loss of possession was not related to the conflict, it shall dismiss the claim on the basis of Article 11.4 (b) of Law no. 03 / L-079.

21. In the case file submissions, there is evidence that one of the potential co-owners, after the death of the owner F. A., sold the property to the appellees and received the requested price. Whereas, according to the statement signed by the other potential inheritors, the money from the sale price has been divided between them in equal parts. The KPCC and the Supreme Court do not have the right to review other elements that refer to the validity of the Sales Contract or inheritance proceedings because it falls outside the jurisdiction of the KPCC and the Appeals Panel.
22. As can be seen from the case file, the property had become the subject of the sale to at least two different persons and the cadastral records indicate that it was registered in the name of the other person. The appellant does not deny the fact that Djurdje Andrijevic had entered into a transaction with the appellees and had sold the property, but she claims that he did not have the right to do so.
23. The Supreme Court, after reviewing the evidence collected in this case, considers that the appellant did not prove that the loss of possession of the claimed property was related to the conflict. On the other hand, according to the Consolidated Verification Report, the KPA Verification Team has verified positively the sales contracts with the legalized signatures. Despite the findings as to whether the contracts were forged or not, the dispute is focused on the issue of contracts from 2002 and the statement verified in court that the property was sold by D. A.
24. This leads the Supreme Court to the conclusion that KPCC has rendered a just decision on fair grounds when it dismissed the appellant’s claim. The Commission was right to consider that the appellant failed to prove the loss of property right over that property right before or during the 1998/99 conflict. Those circumstances and the assessment of the potential validity of these contracts, however, fall outside the jurisdiction of the KPCC. On the other hand, the contestation of contracts signed in 2002 means that we are not dealing with possession during or after the conflict. This assumption can be challenged again before the competent Municipal Court. Consequently, the Supreme Court concludes that the KPCC's decision was fair and that the legal basis is in the applicable law. Therefore, the appeal is unfounded and should be rejected.
25. Based on the above, in accordance with Section 13.3 (c) of UNMIK Regulation 2006/50, as amended by Law 03/L-079, it was decided as in the enacting clause of this Judgment.
26. This judgment does not confirm any right of any party over the property and does not prejudice the appellant's right to seek his rights before the competent court if he/she finds it necessary.

Legal advice

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 ordinary or extraordinary legal remedies.

Beshir Islami, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Shukri Sylejmani, Judge

Timo Eljas Torkko, EULEX Registrar