

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-047/14

Prishtinë/Priština,
11 November 2015

In the proceedings of

Xh.G.

Halil Agusholli St. 110
Pejë/Peć

Appellant

Vs

V.D.

Montenegro

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Rolandus Bruin and Anders Cedhagen, Judges, on the appeal against the decision of the Kosovo Property Claims Commission (KPCC) no. KPCC/D/R/190/2013 (case file registered with the KPA under no. KPA28991) dated 13 February 2013, after the deliberation held on 11 November 2015, issues the following:

JUDGMENT

1. **The appeal of Xh.G. against the decision of the Kosovo Property Claims Commission no. KPCC/D/R/190/2013 dated 13 February 2013 with regard to the claim registered with the KPA under no. 28991 is rejected as ungrounded.**

2. **The decision of the Kosovo Property Claims Commission no. KPCC/D/R/190/2013 dated 13 February 2013, with regard to the claim registered with the KPA under no. 28991 is confirmed.**

Procedural and factual background:

1. On 19 September 2007, V.D. (hereinafter: the Claimant) filed a claim with the Kosovo Property Agency (hereinafter: KPA) seeking re-possession of a property. She alleged that she is a co-owner of the parcel located in the Municipality of Pejë/Peć, parcel no. 128/1, with a surface of 00.04.02 ha (hereinafter: the claimed property) and stated that the property was usurped. The Claimant alleges that the immovable property was lost as a result of the circumstances in 98/99 in Kosovo and adds that the date of loss is 12 June 1999.
2. In support of her claim the Claimant submitted with the KPA the following evidence:
 - Sales contract concluded on 6 November 1991 between V.V. in the capacity of the Seller of parcel no. 4940/1 and S.G. in the capacity of the Buyer. The contract does not refer to the claimed property.
 - Possession List no. 937 issued by the Department of Cadaster and Geodesy of the Republic of Serbia on 17 February 1997. According to the possession list, V.V. is co-owner (with 1/5 ideal part) of the claimed property.
 - Inheritance Ruling no. Vr. 20/97 issued by the Municipal Court of Pejë/Peć on 17 February 1997 through which V.D. inherited 1/3 of the 1/5) ideal part of the claimed property from her deceased father V.V. .
 - Death Certificate no. 200-3/000SL/97 issued by Civil Registration Office of the Municipality of Pejë/Peć on 14 February 1997 proving that V.V. died on 11 February 1997 at the Municipality of Pejë/Peja.

- Written statement given by the Claimant on 16 September 2009 where she states that her deceased father V.V. had sold only the parcel no. 4940/1 with a surface of 00.23.44 ha to the deceased S.G. (father of Xh.G.).
3. On 8 November 2008 the KPA identified the property which was found to be a destroyed and abandoned house. The confirmation and identification of the property was performed on 16 February 2010.
 4. On 25 October 2011, Xh.G. (hereinafter: Respondent), as the heir to her husband Xh.G., through her legal representative, lawyer B.L., participated in the proceedings before the KPA where she denied the allegations of the Claimant and expressed a legal interest on the claimed property.
 5. In support of her allegations she submitted with the KPA, among others, the following evidence:
 - Sales contract concluded on 6 November 1991 between V.V. in the capacity of the Seller of the parcel no. 4940/1 and S.G. in the capacity of the Buyer of the property. The Contract was not legalized.
 - Written statement dated 17 July 2008 where M.L. states that V.V. has sold the immovable property (he has no information about the surface) to IS.G. in 1991.
 - Written statement dated 28 July 2008 where Xh.G. alleges that his father, S.G., in 1992 had purchased an immovable property (with a surface of 00.25.00 ha) from V.V., and that the sales contract was drafted in the office of the lawyer B.L.
 - Written statements dated 28 July 2008 where H.L. and N.B. allege that S.G. has purchased a real estate (with a surface of 00.25.00 ha) from V.V.. E.G. alleges that the son of S.G. (Xh.G.) and himself were present during the drafting of the contract in the lawyer's office.
 - Claim C. no. 525/09 on the confirmation of the ownership right based on the sales contract filed before the Municipal Court in Pejë/Peć on 18 August 2009 by Xh., D., D., D., D., D., D. G. (as claimants – all represented by lawyer B.L.) versus V.D. , O.S, D.T., L.V, M.V., N.V. (as respondents).
 - Copy of plan issued on 1 July 2010 by the Department of Cadaster of the Municipality of Pejë/Peć. The claimed property is evidenced under the name of 7 (seven) co-owners and V.D. is one of them.
 - Submission by the lawyer B.L. filed with the KPA on 20 October 2011 in which the lawyer states that Xh.G. died in 2008 and his inheritors are Respondent, Xh.G. (wife), and their children (D.,D.,D.,D.,D.,D., G.). B.L. alleges that the father of the deceased

Xh.G. (S.G.) had purchased parcels no. 4940/2, 4940/3 and 130/2 from V.V. where they built a house (according to him the house was built on parcel no. 4940/3).

6. According to the KPA verification reports, the Inheritance Ruling T. no. 20/97 was positively verified. Additionally, obtained *ex officio* KPA the possession list no. 937, dated 30 December 2008, and updated in 1997. According to this list the claimed property is in the name of seven co-owners and V.D. is among them (1/15).
7. On 19 April 2012, the Kosovo Property Claims Commission (hereinafter: KPCC) ordered a hearing by one of its members (pursuant to Section 5.4 of the Annex III to the UNMIK Administrative Direction 2007/5 as adopted by Law no. 03/L-079) in order to obtain some additional information in relation to the claim. Claimant and Respondent, and N.B., Sh.M., H.L. in capacity of witnesses were all summoned for the hearing. However, only the Respondent and the witnesses attended the hearing. The Claimant did not participate.
8. During the hearing held on 24 May 2012, the Respondent together with the witnesses corroborated their previous statements by alleging again that Xh.G. had purchased an immovable property with a surface up to 00.24.00 ha from V.V in 1991 whereas in 1992 he built a house where they live now. However, none of them mentioned the claimed property (parcel 128/1) anywhere.
9. After the hearing, the KPCC on 13 February 2013 with its decision KPCC/D/R/190/2013 decided that the Claimant is owner with 1/15 of the claimed property and also was owner of the claimed property on the day it was destroyed and is 1/15 owner of the land where the house was located. In the Certified decision Xh.G. is still mentioned as respondent. In paragraphs 19-23 of the cover decision, which according to the certified decision, dated 13 February 2013, apply specifically to the stated claim, it is mentioned that the Claimant based her claim on an inheritance decision of 1997 based on which she inherited the claimed property from her father. The inheritance decision has been positively verified by the KPA Executive Secretariat. Additionally, the possession list of 2008 was found *ex officio* showing the Claimant as co-owner of the claimed property. The Respondent alleges that her husband and her father in law purchased the claimed property in 1991 from the Claimant's father and built a house on it. In support of her allegation, she submitted a number of statements from third parties who allege that they have been witnesses of the property transaction which related to a parcel of 25 are, between the Claimant's father and the Respondents husband and father in law. Claimant submitted also a purchase contract between those parties, but that was related to another parcel. In the hearing which was held on 24 May 2012, the Respondent reiterated her previous allegations that in 1991 her deceased husband purchased a parcel from the Claimant's father in a surface of 24 are and paid the purchase price of 3.700 DM. All three witnesses confirmed that

the Respondent's husband had purchased the land from the Claimant's father and one of the witnesses stated that he was present when the contract was entered and money was paid. The Commission notes that the evidence does not relate to the claimed property but rather to another property which was subject of the contract of 1991. Therefore, based on the evidence before it and in absence of any valid defense by the Respondent the Commission concluded that the claim stands to be granted in the name of the Claimant.

10. On 13 March 2014 the Decision was served on V.D. (hereinafter: the Appellee).
11. Xh.G. (hereinafter: the Appellant) received the Decision on 1 November 2013 and she filed an appeal before the Supreme Court on 2 December 2013.
12. The Appellee received the appeal on 13 March 2014 but filed no response on the appeal.

Allegations of the Appellant

13. Xh.G. alleges that the KPCC's Decision contains essential violation of the substantive and procedural laws because the same rests on biased evidence and it did not take into consideration the evidence and statements presented by the Respondent (now Appellant).
14. The Appellant enclosed with her appeal the following documents:
 - Written statement dated 26 November 2013 in which M.L. states that in November 1991 V.V. has sold to S.G. an immovable property with a surface of 23 or 24 are. In 1992 Xh.G. had purchased from V.V. two additional parcels (he does not know the parcel numbers) with a surface of 21 are respectively 7 are, for a total price of 4.000 DM. He stated that he was present when Xh.G. paid the purchase price to V.V. .
 - Written statement no. 4413/13 dated 29 November 2013 where I.G. states that in 1991 S.G. had purchased from V.V. a parcel with a surface of 23 are. Later, in 1992, Xh.G. had purchased two additional parts (he does not know the parcel numbers) with a surface of 21 are and 7 are for the price of 4.000 DM.
 - Death certificate no. 252 issued by the Civil Registration Office of the Municipality of Pejë/Peć on 8 July 2013 proving that Xh.G. died on 14 September 2008.
 - Electricity Bill dated 4 November 2013.

Legal reasoning

Admissibility of the appeal

15. The Kosovo Supreme Court reviewed the challenged Decision pursuant to the provisions of Article 194 of the LCP and after the assessment of the appellate allegations found the following.
16. The appeal is admissible because it has been filed within the legal deadline pursuant to Section 12.1 of the UNMIK Regulation 2006/50 as amended by Law no. 03/L-079 which provides that the party may file an appeal against the Commission's decision within thirty (30) days from the notification of parties about the decision.
17. Appellant received the KPCC on 1 November (Thursday) 2013. The deadline for filing an appeal was 1 December (Sunday) 2013. Article 7.2 of the Administrative Direction no 2007/5 (Annex of Law no.03/L-079 and 126.5 of the LCP provide: *If the last day of the prescribed period of time falls on an official holiday, on Saturday or Sunday or on any other day when the competent body does not work, the prescribed period of time shall expire at the end of the next working day.*
The appeal was filed on 2 December (Monday) 2013. Consequently, it is considered that the appeal was filed within the statutory deadline

Merits of the appeal

18. After reviewing and assessing the case file submissions and Appellant's allegations, the Supreme Court notes that the appeal is ungrounded. The KPCC Decision is correct. The Court could not find an incomplete determination of facts or misapplication of the substantive and procedural laws.
19. According to Section 3.1 of the UNMIK Regulation 2006/50 as amended by Law no. 03/L-079, the Claimant has a right to an order from the KPCC for repossession of the property if the Claimant not only has established his/her ownership right over the private property but also that he/she now is unable to exercise such property rights over the respective property because of circumstances directly related to or resulting from the armed conflict that has occurred in Kosovo between 27 February 1998 and 20 June 1999. Given that the Claimant states that the date of loss is June 1999 the claim is directly related to or results from the armed conflict in Kosovo.
20. The Supreme Court agrees with the KPA's assessment that the Appellant, while alleging legal right over the property, has failed to present any documentation or other information to support the claimed right neither at the time when the property was notified nor in her appeal even though she was given the opportunity to do so. In the appeal, the Appellant states that her husband was owner of several parcels no. 4940/2, no. 4940/3 no. 130/2. These parcels are not related to the claim in case which refers to parcel no. 128/1. The Appellant refers to a sales contract of 1991. That contract relates to a different parcel (parcel no. 4940/1).

21. The Supreme Court notes that the Appellant has enclosed with her appeal new evidence (statement by witnesses).
22. Based on Article 12.11 of the Law 03/L-079 on the amendment of the UNMIK Regulation no. 2006/50, new facts and material evidence presented by any party to the appeal shall not be accepted and considered by the Supreme Court unless it is demonstrated that such facts and evidence could not reasonably have been known by the party concerned. As the same witnesses and the same allegations were already stated by Appellant before KPA/KPCC the evidence presented in appeal is not new and cannot be considered in this appeal.
23. Furthermore, the Court found that the abovementioned statements contain the same allegations as the statements that were evaluated by KPCC and found insufficient to reject the claim of Appellee. They do not link the claimed parcel 128/1 to any purchase contract between Appellee's father and Appellant's deceased husband, while KPCC established that a purchase on (an) other parcel(s) was agreed between them.
24. From the abovementioned facts results that the factual situation in relation to this legal case has been correctly and fully established and that the KPCC Decision has not been contested by any valid evidence.
25. In light of the above and pursuant to Section 13.3 (c) of the Law no. 03/L-079, the Court decided as in the enacting clause.

Legal Advice

Pursuant to Section 13.6 of the 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

Anders Cedhagen, EULEX Judge

Urs Nufer, EULEX Registrar