

**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-129/13

Prishtinë/Priština, 3 June 2015

In the proceedings of:

D S

P 41

S

S

Appellant

vs.

the inheritors of H Ç

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Willem Brouwer and Rolandus Bruin, Judges, on the appeal against the decision of the Kosovo Property Claims Commission (henceforth: KPCC) no. KPCC/D/A/180/2012 dated 14 December 2012 (case file registered at the KPA under No. KPA08461), henceforth also: the KPCC Decision, after deliberation held on 3 June 2015, issues the following

JUDGMENT:

- 1. The appeal of D S against the Decision of the KPCC no. KPCC/D/A/180/2012, dated 14 December 2012, is rejected as unfounded.**
- 2. The decision of the KPCC no. KPCC/D/A/180/2012 is confirmed as far as it concerns claim no. KPA08461.**

Procedural and Factual background

1. On 11 January 2007 D (L) S (henceforth: Appellant) in her capacity of a family household member of D S (born Dj) filed a claim at the Kosovo Property Agency (KPA), seeking confirmation of the property right of his mother D S over and repossession of a parcel of land at Gladnica pored puta in Petrovë/Petrovo Selo, municipality Prizren, cadastral zone Petrovë/Petrovo Selo, number 291/2, with a surface of 00.04.20 ha infertile land and 00.09.76 third class arable land (total: 00.13.96 ha) (henceforth: the claimed property).
2. Appellant submitted *inter alia* to KPA:
 - Possession list no. 46, Cadastral District Petrovo Selo, dated 8 May 1984; according to this list D S was owner of the claimed property;
 - A document that seems to be a judgment of Municipal/District Court of Prizren, dated (probably) 10-VI-1986, nr. 342/86, parties: D S and H C /H Ć ;
 - A document that seems to be a judgment of District/Municipal Court of Prizren, dated (probably) 3-4-1986, nr. 234/86.
3. According to a Death certificate, dated 27 April 2015, D S died on 6 July 2008.
4. According to a Notification Report, dated 2 October 2008, KPA located the claimed property and found it occupied by F Ć .
5. F Ć signed a notice of participation in the claim proceedings on 2 October 2008. He stated to claim a legal right to the claimed property.
6. On 16 October 2008 H Ć sent a Form of response to the KPA. He stated in this form, that he bought the claimed property from the S family in 1970.
7. He submitted *inter alia* with this response a document titled ‘Temporary Contract on Purchase (and sale)’. According to the text this contract was concluded between M S and H Ć /H Ć in 1970 and was about a field of 54 are, third class, located in Petrovo Selo, G next to the road.
8. According to a Death Certificate, dated 29 April 2015, H Ć , died on 17 July 2010.

9. By letter, dated 20 June 2011, Appellant reacted to this response. He states that he is the legal successor of his mother D S . He contests that the claimed parcel ever was subject of purchase or sale. Het states that H Ć concluded a purchase contract with his late father's stepmother on her share in a parcel of land. Later the parcel was divided and his mother became sole owner of the claimed property, the unsold part of the plot of land.
10. According to a Notification Report, dated 20 February 2012, and a Confirmation of the notified property, dated 23 February 2012, KPA notified the claimed property for the second time and found the claimed property occupied by members of the Ć family. KPA also notified the claim on A Ć .
11. A Ć signed on 20 February 2012 another notice of participation in the claim proceedings and claimed to have a legal right to the claimed property.
12. KPA found in the process of verification of documents ex officio a Certificate for the immovable property rights, dated 24 February 2011. According to this Certificate D S is owner/possessor of the claimed property.
13. KPA contacted Appellant on 10 April 2012. According to the report of this conversation, Appellant stated that his mother never sold the claimed property and that the claimed property had been subject to court proceedings before Municipal and District Court of Prizren in 1986. He also admitted that Ć family used the claimed property since the 1970-ies or 1980-ies.
14. The KPCC decided in the KPCC Decision to dismiss the claim. For the reasoning on this claim KPCC refers in the certified decision to paragraph(s) 11 and 18 in the Cover decision. In its reasoning, as far as relevant, KPCC states that based on submitted or ex officio obtained documents or the statements of the claimant, the claimant failed to show that the claim involved circumstance directly related to or resulting from the 1998-1999 conflict.
15. The KPCC decision was served upon Appellant on 8 May 2013 and on B Ć on 3 May 2013.
16. Appellant filed an appeal, dated 15 May 2013, against the KPCC decision on 10 May 2013 (received on that date at the UNHCR Property Office) and received by KPA on 20 May 2013. The appeal was served on B Ć on 6 September 2013.

17. Appellee did not participate in the appeal procedure before the Supreme Court.
18. The Supreme Court sent a Court Order, dated 13 March 2015 to KPA, Appellant and H Ć or his now interested family members.
19. The Court Order reads:

Where in this order is referred to claimed property, there is meant: parcel Cadastral Zone Petrovë (Selo)/Petrovo Selo – Prizren, nr. 291/2, surface: 4.20 are infertile land and 9.76 are arable field, total: 13.96 are, which is the parcel meant in Possession list nr. 46, Place: Gladnica/Pored Puta;

To the Kosovo Property Agency to clarify within three weeks from receiving this order:

Kosovo Property Agency is asked to verify the judgment of Municipal/District Court of Prizren, dated (probably) 10-VI-1986, nr. 342/86, parties: D S and H C /H Q , and the judgment of District/Municipal Court of Prizren, dated (probably) 3-4-1986, nr. 234/86 and provide the Supreme Court with readable copies and translations in English and Albanian of the originals (these judgements are found on pages 018-027 of the KPA file). If needed and asked, the Court will provide KPA with copies of these pages.

Kosovo Property Agency is asked to provide information from Cadastre on when and how the claimed property was formed? Was this parcel formed in/after 1970 as a result of division between M S and D S ?

To both parties, D S and H Q (or other now interested family member):

Parties have to give a detailed description, supported with evidence, of:

- a. who possessed the claimed property during the period of the armed conflict between 27 February 1998 and 20 June 1999,*
- b. what use was made of the claimed property in this period and*
- c. if, when and how they lost possession of the claimed property.*

To Appellant, D S :

Appellant has to state, provided with evidence:

- a. when D S passed away (evidence to provide: death certificate);*
- b. who is inheritor of the legacy, especially the claimed property, of D S (evidence to provide, if possible: inheritance decision).*

To H Q (or other now interested family member) to answer the following questions, provided with evidence:

Is H Q still alive or did he pass away?

If H Q passed away:

- a. when did he pass away (evidence: death certificate);*
- b. who inherited the legacy, especially the claimed property of H Q (evidence, if possible: inheritance decision) or who claims to have a property right to the claimed property now;*
- c. who takes position in this procedure as appellee.*

Within 3 (three) weeks from the receipt of this order.

The parties are advised that failure to respond to this order within this period may lead to a judgment from the Supreme Court, based on the information and evidence available, without inquiring the parties any further.

20. KPA answered on 27 April 2015, that the KPA could not verify the meant judgments and that the judgements could not be translated because they are not readable. According to the verification officer of KPA in the Basic Court of Prizren were not found copies of the judgments that Appellant submitted to KPA and that the case was given a new case number (eventually 404/89) and that the case should still be pending. KPA sent in reaction to the second issue a Certificate from Kosovo Cadastral Agency, dated 7 April 2015. According to this Certificate the cadastral data were created on 12 June 2012 and the claimed parcel is still in the name of D S as owner/possessor.
21. Appellant answered on 29 April 2015 by submitting a death certificate on D S , meant here fore in paragraph nr. 3.
22. B Ć sent an answer, dated 29 April 2015 and received by KPA on 29 April 2015. He submitted the death certificate on H Ć , meant here fore in paragraph nr. 8 and states *as far as relevant* that the claimed property was purchased by the owner in 1970, that houses has been constructed on the claimed property and there are judgements of the Municipal and District Courts in Prizren. He further states that the claimed property from 27 February 1998 to 20 June 1999 was used by H Ć for the construction of housing and for the yard.

Allegations of the parties

23. Appellant alleges in appeal that he is the legal inheritor of D S . He states that he showed that the claimed property was not lost due to circumstances related to the conflict in 1998/1999. He contests that the claimed property was sold.

Legal reasoning:*Merits of the appeal*

24. According to Section 3.1 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 (henceforth: Law UNMIK 2006/50) KPCC has the competence to resolve conflict-related ownership claims with respect to private immovable property, including agricultural property, involving circumstances directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999.
25. KPCC reasoned that the claim in this case does not have a relation to the armed conflict. KPCC based this conclusion on the allegation of Appellee that the claimed property was purchased in 1970 by the Ć family and used by them during the conflict. KPCC also took into account that Appellant confirmed before KPA that the Ć family used the claimed property since the 1970-ies or 1980-ies (see paragraph nr. 13 here fore).
26. In reaction to the Court Order Appellant did not substantiate that it is untrue that the Ć family in fact possessed the claimed property from before and during the armed conflict.
27. That the Ć family already used the claimed property before the armed conflict follows also from the allegations from both sides and the findings of KPA that already since 1986 a case was pending at the court in Prizren between the parties on the claimed property.
28. Therefore the Supreme Court concludes with KPCC that the claim is not related to circumstances directly related to or resulting from the armed conflict and KPCC lawfully decided that KPCC does not have jurisdiction to decide on the claim. So KPCC lawfully decided to dismiss the claim.

Conclusion

29. Consequently, pursuant to Section 13.3 of Law UNMIK 2006/50 the Supreme Court decided as in the enacting clause of this judgment.

Legal Advice

30. Pursuant to Section 13.6 of Law UNMIK 2006/50 this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Willem Brouwer, EULEX Judge

Rolandus Bruin, EULEX Judge

Signed by: Urs Nufer, EULEX Registrar