

**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-080/2013

**Prishtinë/Priština,
29 September 2015**

In the proceedings of:

R M
Str. F R , no. 137/A
P

Appellant

vs.

M (J) R
D /D
K /K

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Rolandus Bruin and Krassimir Mazgalov, Judges, on the appeal against the decision of the Kosovo Property Claims Commission (henceforth: KPCC) KPCC/D/A/163/2012 (case file registered at the KPA under the number KPA01143), dated 5 September 2012, after deliberation held on 29 September 2015, issues the following:

JUDGMENT

The appeal of R M against the decision of Kosovo Property Claims Commission KPPC/D/A/163/2012, dated 5 September 2012, as far as it concerns claim no. KPA01143, is dismissed as inadmissible.

Procedural and factual background:

1. On 11 October 2007, M (J) R (hereafter: the Claimant) filed a claim with the Kosovo Property Agency (KPA) seeking confirmation of ownership right and repossession of parcel no. 1925/2, Cadastral Zone Dresnik/Drsnik, in a place called “Prline-Kod Hana”, Klinë/Klina, with a surface of 0 ha 4 ar 8 m² (hereafter: the claimed property).
2. To support his claim, the Claimant submitted *inter alia* the following documents:
 - Possession list no. 511 dated 3 July 2006 regarding parcel (field, second class) 1925/2 in the name of M J R ;
 - Copy of plan no. 6 dated 14 November 2006, issued by the Directorate for Cadastre and Property of the Municipality of Klinë/Klina, relating as owner of parcel 1925/2 Isa Ahmet Raci;
 - Possession List no. 632 dated 30 October 2006, issued by the Directorate for Cadastre and Property of the Municipality of Klinë/Klina – under the emblem of United Nation Mission in Kosovo (UNMIK). This possession list provides that the claimed property is registered in the name of Isa (A) R ;
 - Claimant’s ID card no. 2609969932026 issued by the Republic of Serbia on 24 June 1996.
3. On 6 August 2008, KPA notified the claim by putting a poster with information about the claim on the building that is located on the claimed property. The claimed property was found occupied by A R , the son of I R . He stated then that he has permission to stay in the claimed property by R M and his son I M , and that the claimed property was bought from those persons. In addition the notification report states that A R signed a notice of participation. On 29 March 2010 the confirmation of the notified property showed that the notification of the claimed property is accurate.

4. On 19 October 2011, I (A) R (henceforth: the Respondent) filed a response and participated in the proceedings before the KPA. He denied the Claimant's allegations and claimed a legal right over the claimed property.
5. To support his allegations he submitted with his response *inter alia* the following documents:
 - A power of attorney (henceforth: the PoA) dated 17 May 2002; on the PoA is a certification stamp nr. II/1620-2002; according to the text Claimant (R J M) authorised R M to conclude and sign on his behalf a purchase contract regarding the claimed property;
 - Purchase contract dated 5 May 2003 regarding the claimed property, concluded between I R M on one side and the Respondent and M K on the other side; the contract shows a verification stamp of Municipal Court of Klinë/Klina VR.nr.772/2003 dated 12 May 2003; henceforth this contract is referred as: the 2003 Purchase contract;
 - Contract on partition of the claimed property and another parcel between Respondent and M S K (1/2 per each); on the contract is put a verification stamp of Municipal Court of Klinë/Klina VR.nr. 805/2003 dated 14 May 2003;
 - Copy of plan dated 16 May 2003, issued by the Directorate for Cadastre, Geodesy and Property of the Municipality of Klinë/Klina, showing the location and borders of the claimed property;
 - Possession list no. 632 dated 16 May 2003 issued by the Directorate for Cadastre, Geodesy and Property of the Municipality of Klinë/Klina, showing that the parcel no. 1925/2 is registered in the name of Respondent;
 - Purchase contract VR.nr. 796/2002 dated 24 May 2002 by which the Claimant through his authorised person R M sold the parcel no. 1926/2 to his son I R M;
 - Urbanistic permission 07.nr. 350-94/2003 dated 24 June 2003 issued by the Municipality of Klinë/Klina, by which the Respondent was permitted to build at the claimed property a business-residential building;
 - Urbanistic permission 07 no. 351-93/03 dated 27 June 2003 by which the Respondent was permitted to build a business-residential building within the claimed property;
 - Certificate for the immovable property rights UL-71010027-00632 dated 22 March 2011. This document shows that the parcel no. 1925/2 (the claimed property) is recorded in the name of the Respondent.

6. According to a KPA consolidated verification report dated 21 June 2012, the PoA OV.br. 1620/02 dated 17 May 2002, mentioned under paragraph 5, could not be verified at the Court. Other documents mentioned under paragraph 2 and 5, especially the possession list no. 511 in the name of Claimant/Appellee and the possession list no. 632 in the name of Respondent are positively verified.
7. On 5 September 2012, Kosovo Property Claims Commission (KPCC), through its decision KPCC/D/A/163/2012, accepted the claim and established that the Claimant is the owner of 1/1 of the claimed property.

In the reasoning of its decision (nrs. 62-65) the KPCC ascertained that the Respondent could not have acquired ownership right over the claimed property on the basis of the purchase contract VR.nr. 772/2003 dated 12 May 2003 (the 2003 Purchase contract) *“as the third party who purportedly acted as an authorised representative of the Claimant was in fact not conferred with any legally valid authorisation to sell the property”*. The same decision reasons also that the Commission could not rely on the possession list no. 632 dated 16 May 2003 listing the respondent as property right holder, but can rely on the verified possession list no. 511 dated 3 July 2006 listing the Claimant property right holder over the claimed property. Moreover, the decision provides also that *“The Claimant denies to have sold the claimed property, stating that he has not issued any power of attorney nor knows the person he allegedly authorised to sell the claimed property ...”*.

8. On 13 December 2012 Respondent submitted to KPA some more documents:
 - Statement of R S dated 4 December 2012, stating that he purchased the claimed property from the Claimant in 1984;
 - Statement of C G dated 4 December 2012, stating that he purchased the claimed property from R S in 1985;
 - Statement of N N dated 4 December 2012, stating that he purchased the claimed property from C G in 1985.
9. The KPCC decision was served on Claimant (hereafter: the Appellee) on 15 February 2013, while the respondent received it on 13 March 2013.

10. On 4 April 2013 R M (hereafter: the Appellant) filed an appeal to the KPA Appeals Panel of the Supreme Court. On 22 January 2014 the Appellee received the appeal. On 26 February 2014 he replied on the appeal.
11. To support his allegations Appellant submitted *inter alia* the following documents:
- Statement of R S dated 4 December 2012, stating that he purchased the claimed property from the Claimant in 1984;
 - Statement of C G dated 4 December 2012, stating that he purchased the claimed property from R S in 1985;
 - Statement of N N dated 4 December 2012, stating that he purchased the claimed property from C G in 1985;
 - A reply, dated 11 February 2013, to a claim in proceedings before Basic Court of Pejë/Pec, Branch Klinë/Klina, case nr. 234/09, between Appellee as Claimant and Appellant, I M , and respondent as respondents in that procedure.
12. The Supreme Court issued on 12 August 2015 a court order to Appellant. Appellant answered to the Court Order on 8 September 2015.

Allegations of the parties:

The Appellant:

13. The Appellant alleges firstly that the claimed property was sold in 1984 to R S , who paid the agreed purchase price and took the immediate possession of it. The Appellant points out that the purchase of the claimed property is supported with the statement of R S given on 4 December 2012, stating that the claimed property is purchased from Miroslav J R . The Appellant states that before he purchased the claimed property from N N , the same was previously sold two other times. The Appellant alleges that the Appellee was not in possession or use of the property since 1984. Appellant refers also to his stance in the procedure before the Basic Court of Pejë/Pec, Branch Klinë/Klina. In that procedure, with the case nr. 234/09, Appellee claims the annulment of the 2003 Purchase contract. Also in that procedure Appellant alleges that Appellee sold the claimed property in 1984 to R S and eventually Appellant gained the property. Appellant further alleges that the transfer of ownership from Appellee to him in 2003 based on the 2003 Purchase contract has no legal consequences.

He thought by then this was a more easy procedure for transfer of ownership. He states he did not draft the PoA. Even if this PoA is proven to be wrong, so Appellant alleges, this does not mean that Appellee did not sell the property and he is still the owner.

Moreover, the Appellant adds that when they bought the parcel from N N there were some foundation boards which afterwards have been refilled and he turned the parcel into a garden in which they worked continuously from 1986 until 1999.

The Appellant considers that the appealed decision “has not been based on fact and convincing evidences”. Therefore, he requests the Supreme Court the case to return for retrial to the KPA/KPCC.

The Appellee/ Claimant:

14. The Appellee alleges that he is the property right holder over the claimed property even though he is aware of the fact that the claimed property in the cadastre is registered in the name of Appellant. The Appellee did not sell the claimed property and denies having authorised Appellant or I M to sell the same, as he was displaced to Belgrade-Serbia since 1999.

In his reply to the appeal Appellee alleges that the Appellant’s allegations are baseless, that the Appellant never purchased the claimed property and that the proposed witnesses are false. The Appellant’s allegation that the claimed property has been bought in 1984 is not true.

He further states that it is generally known that citizens in Dresnik/Drsnik village left their houses in June 1999 for security reasons. He initiated immediately a procedure when he found out that his property was usurped.

The Appellee adds that the presented statements made in front of a lawyer and the alleged PoA, do not bring any legal effects and as such do not make any relevance in the concrete case. The Appellee requests the Supreme Court to reject the filed appeal as unfounded and to confirm the KPA decision.

Legal reasoning:

Admissibility of the appeal:

15. The appeal is inadmissible on procedural grounds as the Appellant has not taken part in the proceedings in the first instance (Section 13.3 (b) 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; hereafter: Law No. 03/L-079).
16. Section 12.1 of Law No. 03/L-079 stipulates the following: *“Within thirty (30) days of the notification to the parties by the Kosovo Property Agency of a decision of the KPCC on a claim, a party may submit [...] an appeal against such decision”*. Also Article 176.1 of the Law 03/L-006 on Contested Procedure (hereinafter: LCP) provides that (only) parties may file an appeal against a judgement rendered at first instance.
17. A party to the claim and the related proceedings is *“any person other than the Claimant who is currently exercising or purporting to have rights to the property which is the subject of the claim and/or any other person who may have a legal interest in the claimed property [...] provided that such person informs the Executive Secretariat of his or her intention to participate in the administrative proceedings within thirty (30) days of being notified of the claim by the Executive Secretariat in accordance with Section 10.1”* (Section 10.2 of Law No. 03/L-079).
18. In this particular case Appellant did not participate and did not inform KPA of his intention to participate as a party in the first instance proceedings before the KPA/KPCC. In his letter of appeal Appellant did not present a justified reason for his absence in first instance.
19. On 6 October 2008 the KPA notification team notified the claim by putting a poster where the claimed property is located. The property was found occupied by Ardian Rracaj, who stated that he has permission to stay in the claimed property by Appellant and his son Ilir Morina, and that the claimed property was bought from those persons. Further, on 29 March 2010, the KPA based on the ortophoto and GPS coordinates confirmed that the notification of the claim is accurate.
20. On 27 August 2015, the Supreme Court sent the court order to Appellant asking him to provide information, substantiated with evidence, as to why he did not participate in the proceedings before the KPA/KPCC. In his reply of 8 September 2015, the

Appellant stated that “...*he did not participate in proceedings conducted at the Kosovo Property Agency (...), because he has never been invited properly*”. He further stated that “*Practically, in no way he was invited to participate in the proceedings and thus has been unable to take part in conduct of proceedings concerning the specific issue*”.

21. The Supreme Court considers that the KPA has taken sufficient and necessary actions for the notification of the claim by putting the poster on the claimed property. Appellant has not shown his interest for taking part in the procedure before the KPA/KPCC. The Supreme Court also considers that the reaction of the Appellant in his reply to the order of the Supreme Court, that he was not invited by the KPA to participate in the proceeding (before the KPA/KPCC), is not enough as justification for not joining proceedings in first instance.

22. On the basis of the above and in accordance with section 13.3 (b) of Law No. 03/L-079 in relation with Article 186.3 LCP the Court decided as in the enacting clause.

Legal Advice

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

Rolandus Bruin, EULEX Judge

Krassimir Mazgalov, EULEX Judge

Urs Nufer, EULEX Registrar