

**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-140/2014

**Prishtinë/Priština,
3 February 2016**

In the proceedings of:

J.S.

Str. "Mihajlo Mupin" no.3

Peje/Peć

Appellant

vs.

M.M.V.

Ul. Dimitrija katica 9

11000 Belgrade

Republic of Serbia

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Anna Bednarek and Beshir Islami, Judges, on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/A/219/2013 (case file registered at the KPA under No. KPA08943), dated 27 November 2013, after deliberation held on 3 February 2016 issues the following

JUDGMENT

- 1. The Appeal of J.S. against the Decision of the Kosovo Property Claims Commission KPCC/D/A/219/2013, dated 27 November 2013, is rejected as unfounded.**

2. The Decision of the Kosovo Property Claims Commission KPCC/D/A/219/2013, dated 27 November 2013, is confirmed as far as it regards the claim registered with the KPA under No. KPA08943.

Procedural and factual background:

1. On 4 April 2007, the Claimant M.M.V. (hereinafter referred to as: the Appellee) filed a Claim with the Kosovo Property Agency (KPA), seeking the repossession of the commercial property without construction (land/forest), 4th class meadow, land parcel No. 265/6 of the surface 0.09,00 ha, located in Bellopole/Belo Polje (hereinafter referred to as: the claimed property). He stated that the loss of the property took place on 12 July 1998.
2. Together with the Claim the Appellant submitted to the KPA the Possession List No. 261 dated 12 December 2006, listing him as the owner of the claimed property.
3. The case was registered under the number KPA08943.
4. The notification of the Claim was carried out on 30 July 2013. The parcel was found being occupied by J.S. , who was present at the property and signed a notice of participation. He claimed to have a legal right to the property indicating that he had bought it. The correctness of the identification of the claimed property was done according to the cadastral data, ortophoto and GPS coordinates.
5. On 13 August 2013 J.S. (hereinafter referred to as: the Appellant) filed a Reply to a Claim in which he requested to be granted the legal right over the claimed property. In the reasoning he indicated to have purchased the land parcel from the Appellee for the price of 22.000 Euro and the sales contract was verified on 4 December 2002 under the number Vr. 5786/20.
6. Together with the Reply to the Claim the Appellant submitted to the KPA:
 - The copy of the Sales Contract concluded on 7 October 2002 between the Appellee as the Seller, being represented by U.S. and the Appellant as the Buyer, on the basis of which the claimed property allegedly was sold for the amount of 22.000,- Euro. The Contract was verified by the Municipal Court in Pejë/Peç under the number 9841/02;
 - The copy of the Statement signed with the name of the Appellee confirming the receipt of the sales price together with the list of the banknotes delivered by U.S.. The signature of the receiver was legalised by the Basic Court in Bellopole /Bielo Polje on 4 October 2002 under the number 5784/2002;
 - The copy of the Declaration signed with the name of the Appellee stating to have entered into Sales Contract with the Appellant “by his own free will, without coercion and threat”. The signature was legalised by the Basic Court in Bellopole /Bielo Polje on 4 October 2002 under the number 5785/2002;
 - The copy of the General Power of Attorney granting to U.S. the authority, inter alia, to conclude a sales contract with the buyer form which he had already

received the full amount of the sales price. The signature was legalised by the Basic Court Bellopole/Bielo Polje on 4 October 2002 under the number 5786/2002.

7. According to the Verification Report dated 20 August 2013 the Possession List No 261 dated 12 December 2006 submitted by the Appellant, as well as the Power of Attorney granting to U.S. the authority, inter alia, to conclude a sales contract with the buyer and the Certificate for the Immovable Property Rights UL-71611004-00261 were negatively verified by the KPA. The Sales Contract was instead positively verified by the KPA.
8. On 27 November 2013, the Kosovo Property Claims Commission (hereafter to be referred to as: the KPCC), through its Decision KPCC/D/A/219/2013 (hereafter to be referred to as: the KPCC's Decision) accepted the Claim: it established that the Appellee is the owner of 1/1 of the claimed property and ordered the re - possession of it. In the reasoning of the Decision (paragraphs 48-53), the KPCC indicated that according to the findings of the Executive Secretariat the cadastral records were updated in the name of the appellant in 2202. After having confronted the Appellee about the allegations of the Appellant, M.V. stated that he had neither issued a power of attorney to U.S. , nor sold the claimed property. The attempts of the Executive Secretariat to verify the legalisations of the documents allegedly verified by the Basic Court in Belo Polje failed, as the latter Court denied to have ever certified the Power of Attorney. In those circumstances the KPCC indicated that the document may not be considered as sufficient evidence that U.S. was authorised by the Appellee to sell the claimed property on his behalf and as such the alleged transition should be considered null and void. As a consequence, the updated certificate for the immovable property rights identifying the Appellant as the owner of the claimed property was erroneous and cannot be considered as evidence. The Appellant though failed to raise a valid defense to the Claim.
9. The KPCC's Decision was served upon the Appellant on 31 March 2014. On 17 April 2014 the Appellant filed an Appeal against the KPCC's Decision.

Allegations of the parties

10. The Appellant requests the Supreme Court of Kosovo to modify the KPCC's Decision and to refuse the Claim as unfounded. At the same time the Appellant requests to acknowledge his property rights over the claimed property obliging the Appellee to refrain from any interference in the Appellant's possession of the claimed property. In the Appeal he indicated that the KPCC's Decision is based on erroneous and incomplete establishment of facts, as well as, involves fundamental error and serious breach of substantive and procedural law. In the Appellant's opinion he gained the property rights over the claimed property on the basis of the Sales Contract and in case the Appellee considers that there was a manipulation with the legalization of his signature he should file a claim for manipulation and for the enrichment, not just asking for the cancellation of the Contract.
11. The attempt of the UNHCR, Property Office in Belgrade to serve a copy of the Appeal together with the translation to the Appellee failed, as the letter was returned by the Post Office undelivered.

Legal Reasoning

12. The Supreme Court of Kosovo found that the appealed KPCC's Decision was issued in full and fair determination of the factual situation and on such ground both the material and procedural law was properly applied. Therefore, the Appeal is rejected as unfounded.
13. The Appellant alleged to have acquired the ownership rights over the claimed property in accordance with the law. The documents he submitted did not prove that circumstance though. The Appellant argued before the KPCC and in the Appeal to have bought the land by signing the contract with the Appellee, who was represented by the brother of the Appellant, using the Power of Attorney legalised allegedly by the Basic Court in Belo Polje in Montenegro. As the Appellee confronted with that circumstance denied the fact that he had ever issued any Power of Attorney to the Appellant's brother, it was the obligation of the party claiming to have entered into contract legally to prove that circumstance. Contrary to what the Appellant argued it was not the duty of the Appellee to show that he had never signed a power of attorney. The Appellant was informed about the position of the Appellee and declared to be able to submit further evidence to prove the circumstance he claimed, but he never did: the Appellant did not submit the evidence proving that the signature was indeed put by the Appellee under the text of the authorisation.
14. Furthermore, the Executive Secretariat wished to verify the authenticity of the legalisation of the documents submitted as the evidence by the Appellant and the result it obtained leads to a conclusion that the documents may not be considered as trustworthy and valid. The statements and the Power of Attorney submitted by the Appellant which allegedly were validated in the Basic Court in Bellopole/Belo Polje bore the numbers: 5784/2002, 5785/2002 and 5786/2002. As it appears from the letter received by the KPA from the latter Court, the last number given by it to the verified documents in 2002 was 3567. For that reason it was impossible to obtain the verification with the number 5784-5786 in the year 2002 in the Basic Court in Belo Polje.
15. It is important to note that there are doubts as to the authenticity of the verification of the documents also because the Power of Attorney should have been the first document to legalise, as it was the basis to enter the contract on behalf of the Appellee. The document though obtained the highest number of the three documents, which means it was allegedly verified as the last one.
16. Moreover it should be noted that the attached copy of the Sales Contract allegedly entered into on 7 October 2002 contains the data of the Appellee like the personal number: 2604950930001. The identity card attached to the case file proves though that the personal number of the Appellee is 2507934934967. Also the numbers of the identity card of the Appellee valid on 7 October 2002: indicated in the contract and attached by the Appellee to the Claim do not correspond.
17. For all the above mentioned reasons the Supreme Court is of the opinion that the Appellant did not prove that he has the legal title to possess the claimed property. In the view of the Court, according to the evidence gathered the Appellant is not, and has not been the owner of the claimed property. The documents delivered to the KPCC and

gathered in the case file may not be considered as proving the legal rights of the Appellant and to substantiate the request for the repossession.

18. Additionally, the Supreme Court wishes to clarify that contrary to the argument of the Appellant it was not the Appellee, but the Appellant himself who would have a legal interest in filing of a claim against persons who assisted him in signing of the sales Contract of 7 October 2002 for eventual damages which arose due to that fact.
19. Consequently, the Appellant's Appeal is rejected as unfounded and the appealed KPCC's Decision is confirmed as correct and based on properly applied law, pursuant to Section 13.3 (c) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079.

Conclusion

20. Based on the aforementioned and in pursuant to Section 13.3.(c) of the Law No. 03/L-079 and Article 195, paragraph 1(d) of the Law on Contested Procedure, it is decided as in the enacting clause of this Judgment.
21. This Judgment has no prejudice to the Appellant's right to refer his case to the competent court outside the jurisdiction foreseen by provisions of Section 3.1 of Law no. 03/L-079.

Legal Advice

Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by Law 03/L-079, this Judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Anna Bednarek, EULEX Judge

Beshir Islami Judge

Urs Nufer, EULEX Registrar