

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

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË AKP-ës
ŽALBENO VEĆE KAI**

GSK-KPA-A-113/12

**Prishtinë/Priština,
10 December 2013**

In the proceedings of

Z. V.

Claimant/Appellant

vs

H. U.

Respondent/Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Elka Filcheva-Ermenkova, Presiding Judge, Esma Erterzi and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/142/2012 dated 29 February 2012 (case file registered at the KPA under the number KPA11533) after deliberation held on 10 December 2013, issues the following:

JUDGMENT

- 1. The appeal of Z. V. against the decision of the KPCC/D/A/142/2012 dated 29 February 2012 (case file registered at the KPA under the number KPA11533) is rejected as ungrounded.**

- 2. The decision of the Kosovo Property Claims Commission KPCC/D/A/142/2012 dated 29 February 2012, regarding the case file registered at the KPA under the number KPA11533, is confirmed.**

Procedural and Factual Background

1. On 19 June 2006, the claimant Z.V. filed a claim with the Kosovo Property Agency (KPA) alleging to be the property right holder of the cadastral parcel 2923 in cadastral zone “Korishe”, Prizren. Claiming that the loss of possession of the property derived from the conditions of the armed conflict, she asked for the re-possession of the said property. She alleged that Sh. K. occupied the land. She did not submit any cadastral records or certificate; however submitted the Judgment of the Municipal Court in Prizren P.br.726/97 dated 20 April 1998 to support the claim.

2. On 1 August 2008, the Kosovo Property Agency (KPA) notified the claim and found out that there is a house constructed which was being used by H. U. H. U. filed a declaration on that he claims property right over the property in dispute.

3. KPA, with the check made at the Cadastre and the Municipal Court in Prizren confirmed that cadastral parcel no 2923 is registered under the name of Sh. K. (Xh.) in the possession list no 574. The judgment of Municipal Court in Prizren, P.br.726/97, dated 20 April 1998 and the minutes of the same Court in the execution procedure, I. br. 212/03 dated 13 April 2006, are positively verified.

4. On 29 February 2012, with the decision KPCC/D/A/142/2012, Kosovo Property Claims Commission (KPCC) decided that the Commission’s jurisdiction is excluded according to Section 18 of UNMIK Regulation No 2006/50 on the resolution of claims relating to private immovable property, including agricultural and commercial property, as amended with the Law No 03/L-079 (hereinafter Law 03/L-079, as discussed in the judgment of the Supreme Court in case no GSK-KPA-A-098-13), due to the existence of a lawsuit with a competent court filed by the property right holder prior to 16 October 2006. The KPCC relied on the fact that the Municipal Court in Prizren issued a judgment on 20 April 1998 acknowledging the ownership right of the claimant 1/3 shares over the said property. It further noted that the same Court issued

a Decision on 13 April 2006 on accepting the withdrawal request for eviction of the said property due to the fact that three houses were built on the parcel.

5. The Decision was served on the claimant (hereinafter appellant) on 15 August 2012. She filed an appeal on 24 August 2012.

6. The appeal was served on the Respondent on 13 November 2013. He did not file a response.

7. The appellant also asked for assistance for the cost of the procedure. The KPA Appeals Judge with the order dated 25 January 2013 requested the proof of lacking financial means to support her application. The order was served on 12 July 2013 to the appellant who replied on 22 July 2013. The KPA Appeals Panel was informed of the communications on 17 October 2013 by the KPA.

Arguments of the parties:

8. The appellant alleges that she is the owner of the parcel no 2923 and Mr. Sh. K. occupied the property. She claims that she lost the possession due to the conditions related to the armed conflict. In her appeal, she further argues that her ownership right over the said parcel had been acknowledged with the final judgment of the Municipal Court in Prizren (P.br.726/97 dated 20 April 1998) even before the conflict in Kosovo. She challenges the application of Section 18 of Law 03/L-079 to the case. She maintains that KPCC has jurisdiction over the claim since the execution of the previous final judgment could not be realized.

9. At the time of notification of the claim, KPA verifies that H. U. possesses the house contracted over the claimed property. H. U. claims that he purchased the claimed property from K. U.Y. based on an oral agreement between him and the sellers. He does not present any document to this end.

Legal Reasoning

Admissibility of the appeal

10. The appeal is admissible. It is filed within the deadline prescribed by Law 03/L-079.

Merits of the appeal

11. Since the Supreme Court does not impose court fees anymore (see Judgment of the KPA Appeals Panel no GSK-KPA-A-36/13 dated 12 November 2013), there is no need to take a stance on the request of the appellant for assistance.

12. The appeal is rejected as ungrounded. The decision of the KPCC dismissing the claim is to be approved.

13. The KPCC relied on its conclusion on the existence of a judicial proceeding filed by the claimant to another court prior to filing of the claim with KPA. Supreme Court notes the proceeding initiated by the claimant before the Municipal Court was not pending at the time of filing of the claim at hand with the KPA. The previous claim on the same subject matter between Z. V. and Sh. K. (and other respondents) was finalized with a final judgment of the Municipal Court in Prizren (P.br.726/97 dated 20.04.1998). Therefore, the conclusion of KPCC dismissing the claim pursuant to Section 18 of Law 03/L-079 cannot be upheld by the Supreme Court. The purpose of the legislator with that provision is to avoid *litispendence* and/or vesting concurrent jurisdiction to two courts. However, the interpretation of the KPCC on that this claim is not within its jurisdiction is correct. Thus, the result achieved by the KPCC as the dismissal of the claim with the said Decision is to be upheld.

14. According to Section 3.1 of Law 03/L-079, KPCC has competence to resolve the ownership claims or claims involving right of use where the claimant is not able to exercise such property rights due to the circumstances directly related or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999. In Section 3.2 of the same, it is stated that “nothing in this section shall prejudice the rights of the claimants to pursue before courts of competent jurisdiction claims that do not involve the ones described in Section 3.1.

15. Given that the appellant already obtained a final judgment of the Municipal Court of 20 April 1998, acknowledging her ownership right over 1/3 of the parcel no 2923, the only action that is to be taken in this matter was the execution of the said Judgment. The appellant already initiated such execution procedure in 2003. The non-execution of the judgment does not derive from ineffectiveness of the Kosovo Courts as the appellant alleges in her appeal but from her declaration on withdrawing the execution request about parcel 2923. The Supreme Court notes that this withdrawal request owes to the impossibility of the execution of the final judgment on ownership since there were houses built over the cadastral parcel as noted in the minutes of the Municipal Court dated 13 April 2006. It is the appellant who declared to the Court that she would file a new request for execution due to the conditions observed at the time of site inspection for execution.

16. On the other hand, the appellant filed an ownership claim against the registered owner K. Sh. in 1997. This indicates that the property dispute between the appellant and the K. Sh., who was indicated as occupant by the appellant in the claim, started before the armed conflict which has no direct link with it as the Law requires. Moreover, K.Sh.is the registered owner of the cadastral parcel 2923 in the possession lists no 574 and in the Cadastre. The current possessor claims that he bought the land with an oral contract. The Judgment of the Municipal Court had not been enforced yet so the appellant lacks a legal title over the claimed property for the time being.

17. Without prejudice to the arguments of the parties and observation of the Supreme Court provided above, the Supreme Court considers that the KPCC should have dismissed the claim at hand pursuant to Section 11.4.(c) of Law 03/L-079. The appellant also admits that there is a final judgment Municipal Court judgment on the merits of her claim filed with the KPA. The same claim had already been considered and decided in a final judicial decision of the Municipal Court in Prizren.

18. The fact that that judgment cannot be executed does not change the result that KPCC lacks jurisdiction to hear it (once) again. The existence of the building over the parcel makes the execution impossible. The construction of building on someone else's property, if this is the case, is subject to different provisions of the Law on Property and Other Real Rights. The appellant is free to seek for reward for her ownership rights which cannot be executed due to the construction of buildings over the claimed property by the registered owner, or the current possessor or any other person before the ordinary court having competence. This matter does not fall under the jurisdiction of KPCC. Therefore, the result achieved by the KPCC as to the dismissal of the claim is to be upheld based on reasoning above. The Supreme Court decides as in the enacting clause.

Legal Advice

19b. Pursuant to Section 13.6 of Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Elka Filcheva-Ermenkova, EULEX Presiding Judge

Sylejman Nuredini, Judge

Esma Erterzi, EULEX Judge

Holger Engelmann, EULEX Registrar

