

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-79/13

Pristina, 18 November 2014

In the proceedings of:

S. D.

Peja

Appellant

vs.

Xh. F.

Montenegro

Claimant - Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of judges: Willem Brouwer, Presiding Judge, Esma ERTERZI and Sylejman Nuredini, member, deciding on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/119/2011 case file registered at the KPA under the number KPA17575 dated 07 September 2011, after deliberation held on 18 November 2014, issues the following:

JUDGMENT

1. The appeal of S. D. from Peja against the decision of the Kosovo Property Claims Commission KPK/D/A/119/2011, case file registered at the KPA under the number KPA17575 dated 07 September 2011, is rejected as ungrounded.
2. The decision of the KPK/D/A/119/2011, case file registered at the KPA under the number KPA17575 dated 07 September 2011, is confirmed

Procedural and factual background:

1. On 23 November 2007, Xh. F. filed a claim with the Kosovo Property Agency (KPA) in the capacity of the son of the alleged property right holder, seeking the right of re-possession. He claims that his deceased father A. F. is registered as the owner of parcel no. 130 according to the possession list 94 Cadastral Zone Bezhenik, Municipality of Peja.
2. To support his claim he provided the KPA with the following documents:
 - Identification card issued on 29 September 2002, by the competent authority of Municipality of Niksic, Republic of Montenegro.
 - Possession list no. 94 dated 20.5.2005 issued by the Directorate for Cadastre, Geodesy and Immovable Property Ownership of the municipality of Peja, nr.928, whereby is ascertained that parcel 130 located at the place called "Gorazhdevackopole" of culture field 5th class in the surface of 1.31.01 ha is registered under the name of A.F.
 - Act of death dated 08 October 2007 whereby is ascertained that A. F. passed away on 01 September 1996,
 - Birth certificate issued by the competent authority of Niksic, Republic of Montenegro, dated 08 October 2007 Xh. F. is son of A. F.
3. Verification team of the Kosovo Property Agency according to the notification and confirmation report dated 23 April 2007 and 30 August 2010 has notified the cadastral parcel subject of claim by concluding that the property is not usurped.

4. Verification commission according to the verification report dated 19 March 2007, 05 February 2008 and 08 November 2007, found that, all these evidence–documents have been positively verified.
5. Kosovo Property Claims Commission (KPCC) regarding the claimed property, with its decision KPCC/D/A/119/12 dated 07 September 2011, established that the claimant has proved that A.F. is the owner with 1/1 of the claimed property and that Xh. F. has the possession right over the said immovable property. In the reasoning of the appealed decision is ascertained that the claimant has submitted legally valid evidence to prove that his deceased father is the owner of the 1/1 ideal part of the claimed property. Except this, no one contested this immovable property. Likewise, the impossibility to exercise the ownership right is connected with the circumstances directly related to or resulting from the armed conflict that occurred in 1998/99.

Appealed allegations:

6. Appellant S. D. received the appeal on 26 March 2013. Whereas, he filed an appeal on 04 April 2013. The appellant alleges that this appealed decision contains essential violation of provisions of material and procedural law and erroneous and incomplete determination of factual situation. Therefore, he proposes that this decision is amended, so that to appellant is recognized the ownership right over the contested parcel, by obliging the claimant to recognize this right with the registration at cadastral books.
7. In his appeal he further states that in 1983, himself together with his father R. D. have purchased from A. F., the immovable property subject to the claim, by paying the sales price, in amount of 90 million dinars. The transfer of this property could not be done because the regime of that time and the discriminatory laws prohibited it. In this property they have built the house in 1984 and reconstructed it in 1998/99, after it was burnt by the Serbian forces. As evidence they have attached also some statements of the following witnesses: S.K., Z. N., F. D. and T. R.. All these witnesses at their uniformed statements have alleged that appellant and his father R. D. have purchased the immovable property in 1984 where they have constructed their house with annex buildings.
8. Claimant received the decision on 07 February 2012. The appeal was served on him on 18 December 2013. On 27 January 2014, he filed his response to appeal. Wherewith he alleges

that the appellant's father according to the sales contract of the immovable property dated 04 October 1983, sold to him the parcel no. 129 in the surface of 0.71.73 ha, registered according to the possession list no. 129, Cadastral Zone Brezhnik. In this parcel, he constructed the house and annex buildings. Furthermore, he alleges that he did not sell the property subject of the claim.

9. Admissibility of the appeal:

10. Supreme Court of Kosovo, reviewed the appealed judgment pursuant to provisions of Article 194 of LCP, and after the evaluation of appealed allegations found that:
11. The appeal is admissible because it was filed within the period prescribed under Section 12.1 of UNMIK Regulation No. 2006/50 as amended by Law No. 03/L-079, which stipulates that a party may file an appeal against a decision of the Commission within thirty (30) days of the notification of the parties of the decision. This is because the decision was served on the appellants on 26 March 2013 and he filed the appeal on 04 April 2013.

Legal reasoning:

12. The Supreme Court finds that the appealed decision is grounded on complete and correct determination of factual situation, and provisions of material law were appropriately applied. The appealed decision is not issued in essential violation of provisions of contested procedure, which have an impact on impartiality, legality and correctness of this decision. KPCC has fully and correctly established the relevant facts, which are important for issuing a fair and legal decision, when it recognized the property right over the cadastral parcels to A.F.
13. Subject of consideration and assessment were the allegations of the appellant that the contested property was purchased by the appellant and his father in 1983 from the claimant's father, by paying the sale price, so that they constructed the house, but it found that they were ungrounded, inadmissible and inconsistent with the evidence disposed and facts established in the appealed decision.

14. This is exactly for the reason that the appellant failed to provide legally valid evidence in support to their allegations, or any other documented evidence, which would prove this ownership right.
15. The Supreme Court notes that, the witnesses' statements attached to the appeal, wherein is emphasized that the appellant and his father have purchased the immovable property subject of the claim in 1984, where they constructed their houses, are not documents and evidence proving the ownership right. Consequently, based on the foregoing the Supreme Court finds that the appellant has not presented sufficient evidence in the support of those appealed allegations.
16. This is because, according to the possession list no. 94 94 dated 20.5.2005 issued by the Directorate for Cadastre, Geodesy and Immovable Property Ownership of the municipality of Peja, nr.928, is ascertained that parcel 130 located at the place called "Gorazhdevackopole " of culture field 5th class in the surface of 1.31.01 ha, is registered under the name of Adem Ferizi.
17. Based on the same situation of the case, it results that provisions of Article 115 of Law on Property and Other Real Rights have been properly applied. This legal provision provides that a legal valid action and registration in the immovable property rights register is required for the acquisition, change of content, transfer, termination of ownership and other real rights. Given that the immovable properties that are subject of the claims were registered in Possession List no. 94 under the name of A.F., the Supreme Court concludes that the appealed decision is fair and lawful. Constitutional element for acquiring the immovable property is the legalized contract at the respective authority and registered in the cadastral books of the Office of Municipal Cadastre. Furthermore, the appellant failed to provide legally valid evidence in support of appealed allegation that he has constructed buildings in the contested parcel at the time of their construction, although he preserved the burden of prove.
18. Furthermore, pursuant to provision of Article 7 para 2 of Law 2002/5 on Establishment of Immovable Property Rights Register, it is assumed that the parcel which is subject of this claim and which is registered under the name of A. F. according to Possession List 94 of Department of Cadastre, Geodesy and Property, dated 25 May 2005, is accurate, true and legal as long as they are not corrected based on procedures established by law. Therefore, if eventually the claimants allege that the immovable property rights register in the Cadastral

Office of Peja, is not legal and violates their rights, then they have the authority and responsibility to initiate relevant judicial proceedings to establish such allegations pursuant to Article 5.4 of the same law.

19. In the light of the foregoing, pursuant to provision of Section 13 par.3 sub-para (c) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 is therefore decided as in the enacting clause of this judgment.

1. Legal Advice:

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

Willem BROUWER, *Presiding Judge, EULEX*

Sylejman Nuredini, *Judge*

Esma ERTERZI, *EULEX Judge*

Urs Nufer, *EULEX Registrar*