

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-105/13

Pristina, 12 March 2013

In the proceedings of:

M. G.

B.

Appellant

vs.

P. R.

M. 2

K., B.

S.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Willem Brouwer, EULEX Presiding Judge, EULEX Judge Esma Ertezi and Judge Sylejman Nuredini, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/147/2013 dated 19 April 2012 (case file registered at the KPA under No. KPA 14385), after deliberation held on 12 March 2014, issues the following:

JUDGMENT:

1. **The appeal of M.G.is founded;**
2. **The decision of the Kosovo Property Claims Commission KPCC/D/A/147/2013, dated 19 April 2012, is annulled regarding the file registered at the KPA under No. KPA 14385;**
3. **The claim registered at the KPA under No. KPA 14385 of P.R. is dismissed because of *res judicata*.**

Procedural background:

1. On 13 October 2006 P. R. filed a claim at the Kosovo Property Agency (KPA), seeking confirmation of his property right over a parcel of land at Sume, Maticane Pristina cadastral number 930/5, with a surface of 1.50.00 ha (the property).
2. The KPCC decided that P. R. had established that he is the owner of the property and that any other person occupying the property was to vacate the property within 30 days of the delivery of the decision.
3. The decision was served upon the appellant M. G. on 28 March 2013.
4. Appellant filed an appeal against the KPCC decision at the KPA on 17 April 2013 which is within the period of 30 days mentioned in section 12.1 of the UNMIK Regulation 2006/50, as amended by Law No. 03/L-079 on Resolution of Claims Relating to Immovable Property, Including Agricultural and Commercial Property.
5. The appeal was served upon the appellee who filed a response with annexes on 1 August 2013.

Factual background

The Appeals panel takes as facts as established by the KPCC and not contested by parties or otherwise proven wrong the following:

6. The appellee P. R. was the rightful owner of the property, he lost possession of this property on as a consequence of the situation in Kosovo during 1998/1999.
7. In its decision of 5 July 2005 (no 326/04), the Municipal Court of Pristina has established that P. R. has established that he is the owner of the property and further that M.G. and H.G.had illegally constructed houses on the property.

8. On 11 April 2006 the appellee P. R. has signed a pre-contract of sale with Arif Gashi concerning the sale of the property to the latter. The agreed price would be € 2.350,00 for 100 m². This pre-contract had an annex, dated 21 September 2006, regarding the price for a certain part of the property. The pre-contract was never executed.
9. A second pre-contract of sale was agreed to by the same parties, dated 6 July 2006, again concerning the property and a price of € 2.350 for every 100m². In article II of this pre-contract a surface of 1.000 m² is excluded and agreed upon to a price of € 1.175 for every 100 m². This 1.000 m² regards the area on which the houses were built. This price was to be regulated by A.G. with the owners of the houses, M. G. and H. G..
10. This second pre-contract neither has been executed and P. R. decided to split up the property. This in order to create parcels that could be sold more easily.
11. The property was actually split up in separate cadastral parcels numbered: 930/35 up to 930/53 (divided by smaller strips of land) and the numbers 930/146, 930/147, 930/148, 930/149 and 930/150.
12. A tabular overview, filed by the appellee shows that on 11 September 2008 22 of the newly formed parcels were sold.
13. On 11 September 2008 the appellee P. R. gave a written authorisation to A.G. to sell the parcels 930/148 and 930/149 on the appellee's behalf.
14. According to a statement of payment of the Raiffeisenbank dated 11 September 2008 an amount of € 32.900 was transferred to the appellee P. R.. In the description it says that the transfer regards the parcels: 930/146, 930/147, 930/148, 930/149 and 930/150.

Legal reasoning:

Position of parties

15. The appellant M. G. claims the rightful ownership of the property.
16. The appellant states that he has bought the property of A.G. in 2007 and that he, the appellant, has nothing to do with the appellee P. R..
17. The appellant illustrates his statement with a contract of sale between P. R. and the appellant dated 11 September 2009, regarding the purchase by the appellant of a parcel with cadastral number 930/146 with a surface of 6.00.00 ha and number 930/150 with a surface of 300m².
18. The appellee P. R. states that his ownership of the initial property, 930/5 has been sufficiently established by the municipal court of Pristina.
19. And further (in short):
A.G. could not have signed a contract of sale regarding the parcels 930/146, 930/147 and 930/150, since he was only authorized for 930/148 and 930/149;

The statement of payment of the Raiffeisenbank of 11 September mentions five parcels whereas A. G. was only authorized to sell two parcels;

The appellee was never informed by A. Gashi that the payment on 11 September 2008 also related to the parcels 930/146, 930/147 and 930/150.

Jurisdiction (ex officio)

20. The KAP Appeals panel has jurisdiction over the case.

Admissibility

21. The appellant's claim is admissible.

Merits

22. The initial claim was filed by the appellee P. R. and regarded the property 930/5 as a whole in 2005 at the municipal court of Pristina.

23. The ownership of the property however was well established by the municipal court of Pristina in its decision of 5 July 2005. This decision, according to the appellee, was confirmed in appeal.

24. Since the claim, filed at the KPA on 13 October 2006, regarded the same parties and the same property, this is to be considered an adjudicated case or *res judicata* pursuant to Section 11.4 (c) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079.

25. Therefore the KPCC should have dismissed the claim.

Conclusion

26. Taking into consideration the above mentioned the appellant's appeal is founded. The decision of the KPCC has to be modified in this way that the claim of P. R. at the KPA has to be dismissed, since the matter already has been decided by the ordinary court and that decision lies to be executed.

Legal Advice

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, EULEX Presiding Judge

Esma Ertezi, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar