

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-162/2015

Prishtinë/Priština,
18 October 2017

In the proceedings of:

N. Ć.

Appellant

vs.

N/A

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Beshir Islami, Presiding Judge, Krassimir Mazgalov and Shukri Sylejmani, Judges, deciding on the appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/A/244/2014 dated 18 June 2014 (case files registered at the KPA under number KPA40406), after deliberation held on 18 October 2017, issues the following

JUDGMENT

1. The appeal of N. Č. against the Decision of the Kosovo Property Claims Commission KPCC/D/A/244/2014 regarding case file registered at the KPA under the number KPA40406, is rejected as unfounded.
2. The Decision of the Kosovo Property Claims Commission, KPCC/D/A/244/2014 regarding the case file registered at the KPA under the number KPA40406 is confirmed.

Procedural and factual background

1. On 13 August 2007, N. Č. (hereinafter: the Appellant) filed a Claim with the Kosovo Property Agency (hereinafter: the KPA) on behalf of his late grandmother, M. Č., seeking repossession over the cadastral parcel no 217/2, cultivated land with the surface of 00.65.00 ha, located at place called “Utrina”, Municipality of Ferizaj/Uroševac (hereinafter: the claimed property).
2. The Appellant declared that his late grandmother is the owner of the claimed property. He claims repossession and compensation because the property has been used without his consent. The loss of possession according to the Appellant happened as the result of the circumstances that occurred in Kosovo on 1998/1999.
3. To support his Claim, the Appellant provided the KPA with the following documents:
 - Court Settlement No 530/95 issued by Municipal Court of Ferizaj/Uroševac on 27 October 1995, according to which the Contract on Sale which was concluded between Agricultural Cooperative “Milan Zečar” from Ferizaj/Uroševac and M. Č. which was legalized before Municipal Court of Ferizaj/Uroševac under the number 1060/63 on 18 December 1966 was declared as Null and Void. The Socially Owned Enterprise “Poljoprivredno Dobro” (Agricultural Goods) was obliged to handover to M. Č. the ownership and possession of cadastral parcel no 21/359/9, cultivated land of the 3rd class, located at the place called “Blato” with the surface 00.65.00 ha, registered at Possession List No 125 or other property that matches the quality, the class and the surface with the above described cadastral parcel. This entire obligation should be fulfilled by Socially Owned Enterprise “Poljoprivredno Dobro” (Agricultural Goods) within 30 days from the day of the conclusion of this Settlement,

- Conclusion No 288/952-3/95 issued by Department for Cadastre Geodesy and Property of Republican Geodetic Authority on 8 November 1995 through which M. Č. was obliged that within 15 days from the date of receiving this Conclusion provide the above mentioned institution with the evidence that she performed the division of the cadastral parcel no 217,
 - Power of Attorney legalized before Municipal Court of Ferizaj/Urošavać under No 7704/68 dated on 3 April 1997 through which M. Č. authorizes her nephew N. Č. to represent her before the Municipal Court of Ferizaj/Uroševac regarding the court proceedings for the case No 45/97,
 - Copy of Plan No 114 issued by Cadastral Municipality of Ferizaj/Uroševac on 4 April 1997, showing cadastral parcel no 217 registered as Socially Owned Property (the user) Agricultural Cooperative “Milan Zećar” from Ferizaj/Uroševac,
 - Decision No 45/97 issued by Municipal Court of Ferizaj/Uroševac on 24 June 1997 through which, pursuant to the Court Settlement No 530/95, the Enterprise “Poljoprivredno Dobro” (Agricultural Goods) was obliged to handover to M. Č. the ownership and possession of cadastral parcel no 217/2, cultivated land of the 6th class, located at the place called “Utrina” with the surface 00.65.00 ha, registered at Possession List No 114, Municipality of Ferizaj/Uroševac.
 - Decision No 252-01-7/97-176 issued by Department for Cadastre Geodesy and Property of Republican Geodetic Authority on 19 September 1997, through which the above mentioned institution approved the changes at the cadastral operator, thus, the claimed property which was registered under the name of Agricultural Cooperative “Milan Zećar” from Ferizaj/Uroševac should be registered on the name of M. Č.,
 - Possession List No 178 issued by (dislocated) Municipal Geodesic Directory of Ferizaj/Uroševac on 25 July 2007, showing the claimed property registered on the name of M. Č.,
 - Power of Attorney legalized before Municipality of Kragujevac on 26 February 2008, whereby M. Č. (the Appellant’s father) authorizes the Appellant to represent him before Kosovo Property Agency regarding the claim No KPA40406.
4. The Notification of the Claim occurred on 21 July 2010 by publishing the claim in the KPA Notification Gazette No 4 and the UNHCR Property Office Bulletin. The Gazette and the list were left with the Head of village who accepted to make it available for interested parties. The same publications were left in the entrance and exit of the village Softaj/Softvić, Municipality of Ferizaj/Uroševac, the Cadastral Office of Ferizaj/Uroševac, Municipal Court of Ferizaj/Uroševac

and Gjilan/Gnjilane Regional Office of the KPA. In addition, the List and Gazette were distributed to the UNHCR Regional Office and Ombudsperson.

5. On 14 May 2014 the Kosovo Privatization Agency upon the request of Kosovo Property Agency informed the latter that the Socially Owned Enterprise “Poljoprivredno Dobro” (Agricultural Goods) is under the administration of the Kosovo Privatization Agency and the Authority for Liquidation of the Agency who is responsible for all the assets which are registered on the name of this Enterprise. The Cadastral Parcel No217/2, Cadastral Zone of Softaj (N. Č.) was sold during 23rd wave of the Privatization.
6. The Executive Secretariat of KPA has found *ex officio* the Certificate for Immovable Property Rights No 114 issued by Cadastral Municipality of Ferizaj/Uroševac, showing cadastral parcel no 217/2 registered under the name of Socially Owned Enterprise “Kombinati Milan Zečar”. The Officer of the Cadaster at Ferizaj/Uroševac Municipality confirmed that the parcel no 217 was divided before the year 1999.
7. On 18 June 2014, the Kosovo Property Claims Commission dismissed the claims through its Decision KPCC/D/A/244/2014. In the reasoning of the Decision it is stated that the Executive Secretariat of KPA has found on the basis of the various documents obtained *ex officio* that the claimed property was a subject of privatization process administered by Kosovo Privatization Agency, in the course of which the property was sold to the third party. The Commission, therefore, concludes that the Claimant did not lose the ability to exercise his right as a result of the 1998-1999 conflict, but instead as result of the subsequent privatization process, consequently, the Claims falls outside the Commissions jurisdiction. The Commission notes that the Decision does not prejudice the right of the claimant to seek relief before a Court of competent jurisdiction. Finally, regarding the compensation, the Commission notes that under the UNMIK/REG/2006/50 as amended by Law No.03/L-079 it do not have Jurisdiction over such claim.
8. The Decision was served on Appellant on 27 November 2014. He filed an appeal on 11 December 2014.

Allegations of the Appellant

9. The Appellant challenged the KPCC’s Decision by stating that the Decision rests on the erroneously and incomplete establishment of the factual situation and violation of the material and procedural law.

10. The Appellant declared that the allegation that his family did not lose the possession over the claimed property because of the 1998-1999 conflict is not true. According to the Appellant, the registered owner of the claimed property is his late grandmother who has gained the claimed based on the Court Settlement No 530/95, Conclusion No 288/952-3/95 and Decision No 252-01-1/97-176. The Appellant's family had a possession over the claimed properties until year 1999 when due to the overall circumstances had to leave Kosovo, therefore, the fact, that the Appellant failed to show the ownership or use right over the claimed property is not true.
11. Based on the above, the Appellant seeks the Supreme Court to accept his appeal as grounded and to confirm the repossession right over the claimed property in favour of the Appellant.

Legal reasoning

Admissibility of the appeal

12. The appeal was filed within 30 days as foreseen by Article 12.1 of the Law No 03/L-079 and is admissible.

Merits of the appeal

13. The Supreme Court reviewed the appealed Decision pursuant to provisions of Article 194 of Law on Contested Procedure No 03/L-006 (henceforth: LCP) and after evaluating the allegations of the Appellant it found that the appeal is unfounded.
14. The Supreme Court finds that the KPCC has rendered a correct Decision when dismissed the claim; however, the Court reasons slightly differently than the KPCC's conclusion.
15. Pursuant to Section 3.1 of the Law No 03/L-079, a Claimant is entitled to an order from the Commission for repossession of the property if the Claimant not only proves ownership of a private immovable property or use rights of the private immovable property, but also that he or she is not now able to exercise such property rights by reason of circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.
16. At first, the Appellant alleges that his family gained the ownership right over the claimed properties based on the Court Settlement No 530/95, Conclusion No 288/952-3/95 and Decision No 252-01-1/97-176.

17. Pursuant to Article 20 of the Law on Basic Property Relations (Official Gazette No 6/80), applicable at the time when the Court Settlement No 530/9 was issued (on 1995), the right of property can be acquired by law itself, based on legal affair (legal transfer) or inheritance.
18. However, Article 33 of the Law on Basic Property Relations (OG SFRY, No 6/80), stipulates that on the basis of the legal affair the property right over the real estate shall be acquired by registration into the “public notary book” (cadastral book) or in some other appropriate way that is prescribed by law.
19. The Executive Secretariat of the KPA has found *ex officio* the Certificates for Immovable Property Rights that reflects the claimed property registered under the name of the Enterprise “Kombinati Milan Zečar”, so, **the cadastral records in Kosovo were not updated in the name of the Appellant’s grandmother name or on the name of her heirs.**
20. The Supreme Court considers that there was no legal or practical obstacle why the cadastral books in Kosovo were not updated in accordance with the Court Settlement considering that it was issued on year 1995.
21. This lead to the conclusion that the Appellant’s family has not gained the property right since the conditions of Article 33 of the Law on Basic Property Relations (SFRY, No 6/80) were not fulfilled.
22. The claimed property was and still is registered under the name the Enterprise which means that it was and it is a socially-owned property. Pursuant to Article 321, paragraph 1 of the LCP there is no need to prove neither the facts that are widely known nor the facts that have been proved in previous court verdicts.
23. Confirmation and protection of the property rights over socially-owned properties and/or state-owned properties is not in the jurisdiction of KPCC, respectively the KPA Appeals Panel.
24. Based on all above mentioned points, the Supreme Court finds that the KPCC instead of dismissing the Appellant’s claim as outside the scope of its Jurisdiction because the Appellant did not loss a possession over the claimed properties due to the 1998-1999 conflict, should have dismissed the claim due to lack of its Jurisdiction as the establishment of right **over socially owned properties** is not within the Jurisdiction of the KPCC (according to the provision 3.1 (a) of the Law No 03/L-079), respectfully the KPA Appeals Panel.
25. The Supreme Court finds that no violation of the substantial law or incompletely establishment of the facts has been made.
26. In the light of foregoing, pursuant to Section 13.3 under (c) of the Law 03/L-079, it was decided as in the enacting clause of this judgment.

Legal Advice

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

Beshir Islami, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Shukri Sylejmani, Judge

Bjorn Olof Brautigam, Acting EULEX Registrar