

**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-015/2014

Prishtinë/Priština, 20 April 2016

In the proceedings of:

F.A.

Devet/Jugoviq Nente Jugoviqet

Appellant

Vs.

D.M.S.

Kralja Petar Prvi 116/2, ap.23I

Smederevska Palanka,

Serbia

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Krassimir Mazgalov and Rolandus Bruin, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/R/205/2013 dated 11 June 2013 (case file registered at the KPA under No. 21215), after deliberation held on 20 April 2016, issues the following:

JUDGMENT

1. The appeal of F.A., filed against Decision of KPCC/D/R/205/2013 (case file registered at the KPA under No.21215), dated 11 June 2013, is rejected as unfounded.
2. The decision of the Kosovo Property Claims Commission KPCC/D/R/205/2013 dated 11 June 2013, is confirmed, as far as it regards to KPA21215.

Procedural and factual background:

1. On 14 March 2007, D.M.S. (hereinafter: the Appellee) filed a claim at the Kosovo Property Agency (KPA) initially on behalf of her – 1987 deceased - grandmother, B.S. seeking for the repossession of $\frac{1}{4}$ ideal part of the parcel 194/1 with surface 96 m² with ancillary objects, yard in area of 05.00 ar and 2nd class orchard of 5.54 ar situated in Devet Jugovica in Prishtinë/Priština (hereinafter: the claimed property). Subsequently the Appellee submitted the Certificate of Immovable Property Rights no. 011-095-43684 dated 4 December 2012 issued by Municipal Cadastral Office of Priština/Prishtinë, which lists her as co-owner of the claimed property with the ideal part $\frac{1}{7}$ and hence the claim has been processed in the name of the claimant as Property Right Holder. She stated that she lost possession over the property due to the armed conflict in 1998/99, indicating 28 June 1999 as the date of loss. The claim was registered at the KPA under KPA21215.
2. The Appellee provided the KPA with the following documents to support her claim:
 - The possession list no. 109, dated 23 March 2006, issued by Geodesy Office-Centre for Immovable Property in Municipality of Priština/Prishtinë, which listed the Appellee's grandmother as the owner of $\frac{1}{4}$ ideal part of the claimed property;
 - The Inheritance Decision O.nr.196/96, dated 17 April 2002 issued from the (parallel) Municipal Court of Prishtinë/Priština, which shows that the Appellee inherited $\frac{1}{8}$ ideal part of the entire inheritance;

- Certificate of Immovable Property Rights no. 011-095-43684 date 4 December 2012 issued by Municipal Cadastral Office of Priština/Prishtinë, which lists the Appellee as co-owner of the 1/7 ideal part of the claimed property.
3. According to the Consolidated Verification Report date 24 April 2013, all the documents above were positively verified by KPA.
 4. The claimed property was physically notified on 7 July 2008 at first. Since the first notification was not correct, another physical notification was done on 1 March 2012. From the second notification which was properly done was found that the claimed property was a house and occupied by F.A. (hereinafter: the Appellant), who was present in person during the notification process. He claimed a legal right over the claimed property and signed the notice of participation on 1 March 2012.
 5. He approached KPA as a responding party, claimed legal rights over the claimed property and submitted the following documents to support his allegations:
 - Contract on sale of the immovable property (cadastral parcel no.193 and 194/6) date 21 August 2000 concluded between D.S. as a seller and F.A. as a buyer. The contract was concluded before the attorney J.M.;
 - Contract on sale of the immovable property (cadastral parcel no.194/1, 2, 3) dated 11 December 2005 concluded between S.S. as a seller and F.A. as a buyer. The contract was concluded before the attorney J.M.;
 - A lawsuit submitted before Municipal Court of Pristina on 26 January 2011, by which he is seeking confirmation of the ownership over the parcels no.193, 194/1, 2, 3, 6.
 6. KPCC with the Decision KPPC/D/R/205/2013 dated 11 June 2013 decided to grant the claim with the reasoning that the claimant stands to be owner of 1/7 ideal part of the claimed property, based on the evidence submitted, and in the absence of a valid defence from the respondent.
 7. The Decision was served on the Appellant on 23 October 2013. On 19 November 2013 he filed an appeal against it.

8. Appellee, together with G.S., sent a response to the Appeal on 14 July 2014.
9. On 30 October 2015 the Court with an order requested the appellee to provide any evidence that could clarify how and when the appellee became owner of the 1/7 of the claimed property.
10. On 23 November 2015 the court received a response from the appellee, with which she submitted some documents which do not clarify the request of the Court.

The allegations of the parties:

11. *The appellant* challenged the KPCC's decision invoking an essential violation of the procedural law and misapplication of the material law. He stated that in this case the loss of possession is not a consequence of the armed conflict 1998-99. He asserted that the Appellee lost the possession over the claimed property because of a sale transaction done in 2005, initiated by S.S.ć. He knew that S.S.ć was not the sole owner of the claimed property, but he perceived him as such. He does not contest the ideal part of the appellee. He also declared that he submitted a lawsuit before the regular court seeking confirmation of ownership over the claimed parcel. The appellant alleges that he had not the opportunity to access the evidence and that the allegations of the appellee, D.S. as inheritor of her grandmother are a forgery. He added that he is not an usurper, but a lawful owner of the claimed property. Therefore he requires from the Supreme Court to approve his appeal.
12. *The appellee*, in her response to the appeal stated that the appellant has no evidence to support his appeal. She declared that the allegations of the appellant that he bought the claimed property are not true, because he cannot prove that he bought it from the co-owners because S.S. and D.S. were not the only co-owners of the property. For these reasons, the appellee asks from the Supreme Court to refuse the appeal of the appellant.

Legal reasoning:

Admissibility of the appeal

13. The appeal is admissible. It has been filed within the period of 30 days prescribed in Section 12.1 of the UNMIK regulation on the resolution of claims relating to private immovable property,

including agricultural and commercial property, amended by Law No. 03/L-079 (henceforth: Law no. 03/L-079).

Merits

14. Following the review of the case file and appellants allegations, pursuant to the provisions of Article 194 of LCP, the Supreme Court found that the appeal is unfounded. The appellant seeks confirmation of his ownership right over the claimed property basing his allegations in two informal contracts, respectively one in 2000 and another one 2005. According to “SRS law on trade of immovable property” (Official Gazette of Socialist Republic of Serbia, 43/81, 1. August 1981, p.3050 and its amendments published in the official gazette no. 28/97, 6/89, 40/89), article 4, paragraph 2, which provides that “Contracts on the transfer of rights to immovable property between ownership right holdershall be concluded in writing; the signatures of the contracting parties shall be certified by the courts”, derive that the contracts submitted by the appellant does not fulfil the legal criteria foreseen from this law, therefore they do not produce effects for the parties. Anyhow from the established evidence results that in the contract of 2005 which is related to the claimed property the seller was not the owner of the entire property, but only of a part of it. Therefore based on the Law on Basic Property Relations (Official gazette no.6/80) article 14, paragraph 2 which foresee that a sale of a real estate owned by several co-owners is valid when consent of the co-owners exists. Furthermore the appellant was aware that the seller S.S.ć in the contract concluded in 2005 was not the sole owner when in the meantime the intent of the alleged contract was the alienation of the entire parcel. Consequently the contract is not valid and does not affect the right of the appellee over the claimed property.

15. Regarding the allegations of the appellant about the inheritance procedure, the Supreme Court assesses that these allegations are ungrounded, because the certificate of the immovable property rights which KPA has found ex officio is based on the same inheritance decision. Following this verified inheritance decision the cadastre office made the registration of the appellee as the owner of 1/7 part of the claimed property.

16. Therefore, the appealed decision neither contains any essential violations nor any erroneous applications of material and procedural law.

17. On the basis of the above and in accordance with the provisions of the section 13.3 under (c), of the Law 03/L-079 the Court decided as in the enacting clause.

Legal Advice

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

Sylejman Nuredini, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Rolandus Bruin, EULEX Judge

Signed by: Sandra Gudaytite, EULEX Registrar