

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-131/13

Prishtinë/Priština,
31 January 2014

In the proceedings of:

Č. S.

Kragujevac (Serbia)

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Elka Filcheva-Ermenkova, Presiding Judge, Willem Brouwer and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/164/2012 (case file registered at the KPA under No. KPA 18282), dated 5 September 2012, after deliberation held on 31 January 2014, issues the following

JUDGMENT

1. The appeal is founded.
2. The decision KPCC/D/A/164/2012, dated 5 September 2012, regarding claim KPA18282 is modified.
3. The claim of Č.S. is granted and he is entitled to the repossession of parcel number 225/2, as mentioned in possession list 58 with a surface of 0.25.59 ha;
4. Any other person occupying the mentioned parcel should vacate the parcel within 30 (thirty) days after the delivery of this judgment
5. Should any other person occupying the parcel fail to comply with the order to vacate the parcel within the period mentioned, he will be evicted from the parcel.

Procedural background:

1. On 24 November 2006 the appellant filed a claim at the Kosovo Property Agency (KPA), seeking confirmation of his property right over a grazing field/land for cattle in Ravše Ljubenić Pejë/Peć, parcel number 225/2, (hereafter: the parcel) as mentioned in possession list 58 dated 24 July 2008 . The parcel has a surface of 0.25.59 ha.
2. The KPCC decided to dismiss the claim with the reasoning that the appellant had sold the parcel voluntary after the armed conflict of 1998/1999.
3. The decision was served upon the appellant on 11 April 2013.
4. Appellant filed an appeal against the KPCC decision at the KPA on 10 May 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.

Factual background

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

5. Appellant was the rightful owner of the property as from 14 December 1988 being the heir of his then deceased father O. M. S.. This according to a ruling on heritage of the municipal court of Pejë/Peć, T.nr. 127/04 dated 14 September 2004.

6. Appellant has filed a copy of the possession list no 58, dated 24 July 2008, confirming him being the rightful owner of the parcel.

Legal reasoning:

Position of parties

7. Appellant seeks the confirmation of his ownership right over the property since the possession and use of the property has been taken by third parties.
8. The appellant states that he never sold the parcel and that the KPCC was presented untrue facts regarding this parcel.

Jurisdiction

9. The Appeals Panel of KPA appeals has jurisdiction on this matter.

Admissibility

10. The appellant's claim is admissible.

Merits

11. The KPCC has founded its decision on a contract of sale from August 2008, between the appellant and his relatives as seller and S.U. as the buyer of a parcel in Ljubinoc (Municipality of Pec/Peja).
12. In this contract of sale the parcel is described as: "*cadastral lot 116, number of scheme/plan 10/1901, of a total of 1.82.38 hectares registered in the property deed no. 58 and located in het village of Ljubenic, Pec Municipality*".
13. The appellants claim however regards: "*the parcel number 225/2, of a surface of 0.25.89 ha*".
14. As an annex to the claim a copy was filed of an earlier version of the property list no 58. On this list both parcels 116 and 225/2 are mentioned.
15. In the possession list 58 of 24 July 2008 the parcel 116 is not mentioned any more.
16. This leads the Supreme Court to the conclusion that when taking the decision, the KPCC apparently mixed up two different parcels. It appears that parcel no 116 was sold in August 2008 and that parcel 225/2 remained in the property of the appellant.
17. According to Section 3.1 of UNMIK Regulation 2006/50 as amended by 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 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.

18. It is undisputed that the appellant was the rightful owner of the parcel and that the ability to exercise the property right on the parcel was lost due to the armed conflict in 1998/1999.

Conclusion

19. The above mentioned leads to the conclusion that the appellant is the rightful owner of the parcel. Therefore the appellant's appeal is founded and therefore, the decision of the KPCC is modified and the appellants claim is granted, this based on Section 13.3 (a) of the UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, with reference to the Articles 195, Paragraph 1 under e) and Article 201 under d) of the Law on Contested Procedures.

Legal Advice

20. 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.

Elka Filcheva-Ermenkova, EULEX Presiding Judge

Willem Brouwer, EULEX Judge

Sylejman Nuredini, Judge

Holger Engelmann, EULEX Registrar