

**SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA**

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË AKP-ës
ŽALBENO VEĆE KAI**

GSK-KPA-A-055/13

**Prishtinë/Priština,
3 April 2015**

In the proceedings of:

B B

S

P

Appellant/Respondent

vs.

S (S) J

V V 35 27

11... B – R B

S

Appellee/Claimant

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Esma Erterzi and Rolandus Bruin, Judges, on the appeal against the decisions of the Kosovo Property Claims Commission KPCC/D/A/163/2012 (case file registered at the KPA under the number KPA56727), dated 5 September 2012, after deliberation held on 3 April 2015, issues the following

JUDGMENT

1. **The appeal of B B against the decision of the Kosovo Property Claims Commission KPCC/D/A/163/201 dated 5 September 2012, as far as it regards the claim registered at the KPA under no. KPA56727 is rejected as unfounded.**
2. **The decision of the Kosovo Property Claims Commission KPCC/D/A/163/2012 dated 5 September 2012, as far as it regards the claim registered at the KPA under no. KPA56727 is confirmed.**

Procedural and factual background:

1. On 3 December 2007, S (S) J (*hereinafter*: the claimant) filed a claim at the Kosovo Property Agency (*hereinafter*: the KPA) seeking the property right and repossession of parcel no.746, with a surface of 19 are 86 m², registered in the Possession List no. 378, Cadastral Zone Sofali/Sofalija, Prishtina Municipality (*hereinafter*: the claimed property). He declared that together with his mother they inherited the claimed property from his father, respectively husband, S J, in 1996, at the time when he had transferred the claimed property to their name (½ of its ideal part for each one). The claimant further states that after the death of his mother - Z J, her part of ½ of the ideal part of the claimed property was inherited by his brother, who is co-owner T (S) J based on an inheritance decision.

The claimant alleges that he lost possession of the property on 12 June 1999, as a result of circumstance of 1998/1999.

2. To support his claim, the claimant among others submitted the following documents:
 - Inheritance decision VT.Nr.184/78, issued by the Municipal Court of Prishtina dated 14 September 1978. According to this decision, T (S) J – the claimant’s brother who is co-owner in the claimed property was declared inheritor of Z J for several listed parcels. This decision on inheritance does not include the parcel -claimed property-, which is subject of the dispute in the claim (i.e. the quoted decision does not refer to the claimed property);
 - Possession List no. 378, issued by the Centre for Cadastre and Immovable Property, Republican Geodesy Office, Cadastral Municipality Sofali, Municipality City of Prishtina, Republic of Serbia, dated 22 November 2001. According to this document, the claimed property is registered in the name of the claimant and his co-owner brother (each ½ of its ideal part);
 - Death certificate of S J (claimant’s father no. 203-9073/03-IV, issued by the Prishtina Municipality in Nish, Republic of Serbia dated 16 April 2003. This certificate ascertains that the claimant’s father had died on 8 January 1996;

- Death certificate of the claimant's father no. 203-124-06-08/16307, issued by the Prishtina Municipality in Nish, Republic of Serbia dated 18 July 2006;
 - Birth certificate of the claimant's father no. 200-12964/09-08-34529, issued by the Prishtina Municipality in Nish, Republic of Serbia dated 27 August 2009;
 - Marriage certificate between the claimant's father (S J) and mother (Z Đ – J) no. 202-1604/09-08-34527, issued by the Prishtina Municipality in Nish, Republic of Serbia dated 27 August 2009;
 - Claimant's identification card no. 1012944910028, issued on 2 November 1999 by the Republic of Serbia.
3. According to the consolidated verification report dated 13 July 2012, it is clear that KPA positively verified the documents listed above submitted by the claimant (except the marriage certificate no. 202-1604/09-08-34527 dated 27 August 2009 and inheritance decision VT.Nr.184/78 dated 14 September 1978). Whereas, according to the other previous report, i.e. the one dated 15 May 2008, it can be seen that KPA Verification Unit *ex officio* obtained the possession list no. 378, issued by the United Nations Mission in Kosovo (UNMIK) dated 14 May 2008, according to which, among others, also the claimed property is registered in the name of the claimant and his brother T (S) J as co-owner – each ½ of its ideal part.
4. On 5 August 2008, B B (hereinafter: the respondent) approached the KPA seeking legal rights over the claimed property by signing the notice for participation in the proceedings. In the statement given in the claim form, the respondent declared that he “bargained” (purchased) the claimed property from the person R (S) J (later the respondent refers to this person as S J) and that he handed over to him the sum of 2000DM. He further added that he is willing to pay the remaining amount of money as debt to this owner of the claimed property, but at the price of sale and purchase determined by the court expert as actual market price. In order to support his allegations, the respondent submitted the following documentation:
- His statement dated 5 September 2008. According to this statement, the respondent states that he had purchased the claimed property and that the person named R (S) J (later the respondent referred to this person as S J) had permitted him to build the houses in the claimed property;
 - Certificate issued by the Kosovo Police Service (KPS), Police Station North, Sector of Investigations in Prishtina dated 17 August 2007. This issued certificate ascertains that the respondent reported the case no. 00/15445 to the police that his residential house was burnt and that he incurred material damages;

- Letter dated 25 July 2011 by the respondent – through his authorised representative, lawyer H L, addressed to the Executive Director of KPA. In this letter, the respondent notifies the KPA that in relation to the same matter a court procedure was initiated before Prishtina Municipal Court as well. Further, he also explained the history of the alleged purchase of the claimed property from S J [compared to when the respondent referred to him as R (S) J];
 - A picture (likely of the claimed property) and a map without a date and number; and
 - Respondent’s identification card no. ID03187821 issued by the Ministry of Internal Affairs (MIA) of the Republic of Kosovo dated 21 May 2010.
5. On 7 March 2012, through his representative – lawyer H L, the respondent again addressed the KPA Executive Director, explaining the same facts, situations and allegations as in his previous letter dated 25 July 2011.

In response to these two mentioned letters submitted by the respondent, the claimant [letters were also signed by his brother who is co-owner of the claimed property T (S) J] initially on 26 November 2011, and then also on 26 December 2012, submitted written statements and with almost identical content, stating that he and his brother are owners of the claimed property and that they had never sold it. Further, he requested the return of possession over the claimed property.

6. On 5 September 2012, the Kosovo Property Claims Commission (KPCC) with its decision KPCC/D/A/163/2012, granted the claim. In paragraph 50 of the cover decision, which according to the upheld individual decision dated 27 December 2012, pertains especially to this claim, it is stated that among documents the claimant had submitted in support of his claim was the Possession List no. 378 dated 14 May 2005, which was positively verified by the Executive Secretariat of KPA. This possession list as such ascertained that the claimed property was registered in the name of the claimant and his brother as co-owner (each one ½ of the ideal part). In paragraph 51 of the same decision it is stated that the respondent alleges that he had purchased the claimed property in 2000 based on sale and purchase contract with the claimant’s father. This paragraph further states that *“...Nevertheless, the claimant submitted a death certificate verified positively, which proves that the claimant’s father had died in 1996”*. Whereas, paragraph 52 finally concludes that *“[Based on testimonies at hand, the commission considers that it cannot rely on the sale and purchase contract submitted by the respondent. Thus, the claim has to be granted]”*.
7. The KPCC decision was served on the claimant (hereinafter: the appellee) on 25 February 2013, whereas on the respondent it was served on 31 January 2013. On 19 February 2013, the respondent

(hereinafter: the appellant) appealed the decision of the KPA Appellate Panel of the Supreme Court. The appeal filed by the appellant was handed over to the appellee on 5 April 2013, whereas on 29 April 2013 he filed a response to the appeal. The Supreme Court received the case file on 12 April 2013.

Allegations of the appellant:

Appellant/ Appellee:

8. The appellant in his appeal alleges that KPCC's decision contains fundamental errors, namely misapplication of the procedural law and that it relies on wrongful and incomplete evaluation of the factual situation.

9. In the proceedings before the KPA/KPCC, the appellant alleges that he and his neighbour L F, in year 2000, on behalf of sale and purchase, paid an advance to S J (claimant's father) in the amount of 20.000DM. According to the appellant, S J had given them – him and his neighbour L F) a statement by which he testified that he had received this amount of monies. The appellant also alleges that he and his neighbour had reached an agreement with S J that after one month, he (S) would hand over to them the completed documentation at the border crossing in M in order to fulfil the sale and purchase of the claimed property. However, he had not come and had not brought the original documents as promised, so they (the appellant and the neighbour) had lost contacts with him, because S J would not answer their phone calls. Further, the appellant declares that the documentation handed over to him by S J (he probably refers to the statement on receiving the advance payment) was burnt in 2000, when his house was burnt down too. To prove this, the appellant offered a verification note issued by the Kosovo Police Service, Investigation Station, dated 17 August 2007, which ascertains that B B – the appellant – had reported the case of his burnt house. Finally, the appellant, declaring that he was deceived by S J (although the appellant does not state if S J was the wrong person to whom he had paid the amount of money mentioned above) showed his willingness to pay the appellee (S J) and his brother T J (co-owner of the claimed property) the actual market price, which would be determined by an expert, of the claimed property in the name of sale and purchase, or to compensate the claimed property with another property in Sofali or in some other village inhabited by Serbian citizens.

10. In his appeal filed before the Supreme Court, the appellant repeated almost the same allegations as those presented before KPA/KPCC, but with the difference that he and his neighbour had purchased the claimed property from the appellee (and not from S J) in 2000. Further, the appellant

states that they (himself and his neighbour) had obtained the appellee's approval for construction of houses in the claimed property. The appellant finally states that they had never reached an agreement with the owners of the claimed property, because they had been asking a higher price than the actual market price.

Therefore, the appellant motions the Supreme Court of Kosovo that his appeal be examined and the appealed decision be amended, and the case be returned to the KPA/KPCC for reconsideration.

Appellee/Appellant:

11. The appellee alleges that he and his brother T J are each co-owners of ½ of the claimed property based on inheritance proceedings after the death of their mother Z J. Further, the appellee (the appeal was signed by his brother too) states that he and his brother as co-owners did not sell the claimed property after their mother's passing and that they are exclusive owners of that property. According to them, they did not give the claimed property for use to anyone, and neither did they give permission or approval for construction of buildings on it. They also declare that they did not sell the claimed property, while the appellant obtained possession of the claimed property without any legal basis, without permission and without their approval. According to the appellee, the appellant's allegation that he had concluded a contract with S (according to the correspondence dated 30 December 2009 between KPA and the appellee, the name "S" was the pseudonym of the name "Sretko") are not true, because the person with this name and surname (their father) had died on 8 January 1996, which means he died before the war in Kosovo. They prove this by presenting the death certificate with ascertains the same date of the alleged death of S J. They claim that they had never established contact with the appellant and that except for the identification card, he does not possess any property documentation, material or valid evidence, thus he has no human or moral right to challenge their property right in the claimed property.

12. Also, in the response to the appeal submitted on 12 April 2013, the appellee repeated the same allegations as those before KPA/KPCC, but stating that the additional declaration in the appellant's appeal that in 2000 he had reached an agreement with S J (and not with S J) is untrue. What is more, according to them, the appellant intentionally changed that names of persons with whom he allegedly concluded the sale and purchase of the claimed property in order to confuse the court. Finally, the appellee in his response to the appeal (the response to the appeal was also signed by his brother who is co-owner) declares that he had tried to find an amicable way to settle the disputed matter at hand, but the appellant had threatened other people who tried to contact him as the owner of the claimed property.

Legal reasoning

13. The appeal was filed within the 30 day time limit as foreseen by Section 12.1 of UNMIK Regulation 2006/50 on resolution of claims related to the private immovable property, including agricultural and commercial property as amended by the Law no. 03/L-079 (*hereinafter the Law no. 03/L-079*) and is admissible.
14. The KPCC based its decision on the fact that the Executive Secretariat of KPA, among the documents submitted by the appellee, positively verified the Possession List no. 378, dated 14 May 2005. This Possession List ascertains that the claimed property is registered in the name of the appellee and his brother T J, each having $\frac{1}{2}$ of the claimed property.
15. The Supreme Court ascertains that the appealed decision is also based on the fact that the appellant had not presented any sale and purchase contract which would serve as basis to support his allegation that the appellant had purchased the claimed property. As a matter of fact, the Court also ascertains that the appellant, in relation to the potential sale and purchase of the claimed property, had not acted in accordance with the criteria set forth in Article 4, paragraph 2 of the Law on Transfer of Immovable Property (OG of RS no. 42 dated 18 November 1998) which as applied at the time when the alleged sale and purchase was concluded, required as condition that a sale and purchase contract of immovability should exist in writing and containing signatures of the parties certified by the court.
16. For the Court, the ascertainment in the KPCC decision that the person S J (father of the appellee) with whom the appellant alleges to have concluded the purchase of the claimed property in 2000 could not have been a party in the alleged purchase is right and lawful. This is because according to the death certificate confirmed by the KPA, it is ascertained that he (S J) had died in 1996. Therefore, based on this, the Supreme Court considers that the appellant's appeal allegations are ungrounded and inadmissible regarding the property right over the claimed property.
17. Based on evaluation of case file submissions submitted before KPA/KPCC as well as the lodged appeal, the Court notes that the appellant is not consistent in mentioning the person's name with whom he alleges that he had concluded the purchase of the claimed property. He refers to this person sometimes as R (S) J and sometimes as S J. In the end, the appellant declares that the person with whom he had concluded the sale and purchase in year 2000 was the appellee himself (S J).

18. The Court ascertains that the appellant, with the submitted documents both before KPA/KPCC and before the Court upon filing the appeal, did not prove the alleged agreement on sale and purchase, so the attempt to present as genuine the fact that he had purchased the claimed property remains at the level of unsubstantiated statements. Consequently, the appellant failed to prove in any way any property right over the claimed property, and he also failed to successfully challenge the ascertainment of the KPCC given in its decision KPCC/D/A/163/2012, dated 05 September 2012, that the appellee is owner of ½ of the claimed property.
19. The Supreme Court finds that KPCC based its just and valid decision on the right and complete determination of the factual situation, as well as rightful application of the material law. Therefore, the Supreme Court concludes that the appeal is ungrounded.
20. Based on the above and pursuant to Article 13.3 sub-item (c) of the Law 03/L-079, it has been decided as in the enacting clause of this Judgment.

Legal advice

Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by the Law no. 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Rolandus Bruin, EULEX Judge

Esma Eterzi, EULEX Judge

Urs Nufer, EULEX Registrar