

**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-168/13

Prishtinë/Priština,

19 February 2014

In the proceedings of

H. Ç.

Mitrovicë/Mitrovica

Appellant

vs

R.M.

Mitrovicë/Mitrovica

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Elka Filcheva-Ermenkova, Presiding Judge, Dag Brathole, and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D-R-173-2012 (case file registered at the KPA under the number KPA00643) dated 24 October 2012, after deliberation held on 19 February 2014, issues the following

JUDGMENT

1. **The appeal of H. Ç. is rejected as unfounded.**
2. **The decision of the Kosovo Property Claims Commission KPCC/D-R-173-2012 (regarding case files registered at the KPA under the number KPA00643), dated dated 24 October 2012 is confirmed**

Procedural and factual background

1. On 29 March 2007 R. M. filed a claim with the Kosovo Property Agency (KPA) seeking ownership of ½ of Parcel nr. 1572 with a total surface of 0,0147 ha according to possession list nr. 1476 of Mitrovicë/Mitrovica. The address of the property is Bore Vukmirovica nr. 45. The claim was made as a household member on behalf of her mother, L. M.
2. In the claim there is a reference to a decision O.br. 149/06, made by the Municipal Court of Mitrovicë/Mitrovica dated 25 July 2006 where it is stated that L. M. has inherited the property from her uncle Đ. J. who also was R. M. grandfather. According to the claim R.M. lived with her mother on the property until 1 June 1999 when they fled due to the armed conflict in 1998/1999. Also according to the claim, the property was occupied by H. Ç.
3. With the claim R. M. also submitted a judgment made in case C.no441/2003 by the Municipal court of Mitrovicë/Mitrovica where it was decided that A. Ç. was the owner of the contested property. A.Ç. was the mother of H.Ç. The parties in the case were A. Ç. as claimant and Đ. J. as respondent. Because the address of Đ. J. was not known, a lawyer was appointed as a temporary representative for him in accordance with article 84 of the Law on Contested Procedure, SFRY, 4/1977 (37) (LCP 1977).
4. Đ. J. died 6 June 1980. The Municipal court of Mitrovicë/Mitrovica was not aware of this fact when it handled case C.no441/2003 in J. absence.
5. H. Ç. responded to the claim on 12 January 2011. In the response she stated that the property had been bought by her brother, E. Ç, who had transferred the property in her name, and that she therefore had the legal right to the property.

6. On 3 April 2007 L. M. filed a lawsuit against H. Ç. before the Municipal court of Mitrovicë/Mitrovica claiming to be the owner of 2/4 of the contested property. The Municipal court of Mitrovicë/Mitrovica has not commenced proceedings in this case.
7. On 24 October 2012 the Kosovo Property Claims Commission (KPCC) awarded the claim in a cover decision. The case is reasoned in paragraph 19 to 22 in the decision. Before making its decision, the KPCC held an oral hearing in the case on 1 October 2012. The KPCC found that the judgment of the the Municipal court of Mitrovicë/Mitrovica was not a sufficient evidence for the fact that A. Ç. had acquired the property. The KPCC found it highly unlikely that Đ. J. had sold the property in 1973, but that his niece and granddaughter afterwards had lived on the property with no interruption until 1999.
8. The decision was served on H. Ç. on 20 May 2013. She filed an appeal to the Supreme Court on 13 June 2013. R. M. responded to the appeal on 30 September 2013. The Supreme Court received the case file on 10 January 2014.

The allegations of the parties

9. H. Ç. alleges that the decision of the KPCC is based on an essential error or non-application of material law, and an erroneous or incomplete determination of the factual situation.
10. The KPCC has mistakenly considered that R. M. has established ownership over the disputed property. When the Municipal Court of Mitrovicë/Mitrovica issued its decision in case T.nr. 149/06 on 25 July 2006 declaring L. M. as the legal heir after Đ. J., more than 20 years had passed and during this time she accepted the factual situation that she is not an inheritor after J. During this time H.Ç. was “responsive possessor” of the property pursuant to Article 28 paragraph 4 of the Law on Basic Property Relations.
11. In the judgment made by the Municipal court of Mitrovicë/Mitrovica on 21 April 2004 it was established that D. J. sold the disputed property to I. H., and that H in 1975 sold the property to the appellant’s mother A. Ç. The KPCC has ignored this judgment, which was final. This is surprising, also because the KPCC has found the ruling on inheritance dated 25 July 2006 lawful, while it at the same time found the judgment, made by the same court on 21 April 2004 unlawful.
12. H. Ç. claims that L. M. lawyer now works for the KPA and has worked to have her declared as the owner, without success.
13. H. Ç. proposes that the Supreme Court should cancel the decision of the KPCC and return the case to the KPCC for retrial.

14. R. M. alleges that the decision made by the KPCC is correct. It is based on the relevant evidence as well as the possession list nr. 1474.

Legal reasoning

15. The appeal is admissible because it has been filed within 30 days as foreseen by law (Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 (the Law)).
16. Because the Municipal court of Mitrovicë/Mitrovica has issued one judgment and one decision within the sphere of the dispute between the parties, the Supreme Court has to decide whether the claim already has been decided *res judicata*.
17. The Supreme Court finds that the Municipal court of Mitrovicë/Mitrovica judgment of 21 April 2004 has not decided the case *res judicata* for two reasons.
18. Firstly the lawsuit was filed against D. J. in 2003, at a time when he had been dead since 6 June 1980. According to Art. 77 first paragraph of the LCP 1977 the party to proceedings may be any natural or legal person. Pursuant to Art. 82 of the same law the court shall *ex officio* make sure that the party actually is legally allowed to act as a party. A person, who is dead, cannot be a party in civil proceedings. The judgment is invalid because the respondent party did not exist.
19. Secondly, the judgment was made after a procedure set by Art. 84 of the LCP 1977, whereby a temporary representative was appointed for Đ. J.. While the court followed a procedure which was in accordance with the LCP 1977, it did not offer a fair trial for the respondent Đ. J., and it offered no part in the proceedings for his inheritor, who was unaware of the proceedings. Neither the respondent nor the temporary representative had any possibility of offering evidence or presenting their allegations. As such the proceeding was a violation of the ECHR 6 nr. 1 which at the relevant moment the ECHR was applicable under Kosovar law in accordance with Section 1.3 of the UNMIK Regulation nr. 1999/24 as amended by UNMIK Regulation nr. 2000/59. The judgment was delivered after two major violations of due process.
20. For both these reasons the Supreme Court finds that the judgment made by the Municipal court of Mitrovicë/Mitrovica on 21 April 2004 does not represent a *res judicata* adjudication of the dispute
21. The decision of the Municipal court of Mitrovicë/Mitrovica dated 25 July 2006 does not decide the case *res judicata* because H. Ç. was not a party to the case. In addition she does not base her allegations on the result on this case.
22. On 3 April 2007 L. M. filed a case against H. Ç. before the Municipal court of Mitrovicë/Mitrovica, see paragraph 6 regarding the fact that the Municipality Court of Mitrovicë/Mitrovica has not commenced proceeding in this case. This claim was filed after the UNMIK Regulation 2006/50

entered into force on 16 October 2006, and this Regulation, as later amended by Law No. 03/L-079 , is therefore applicable in the case according to Section 18.

23. Accordingly, the KPCC was obliged to, and the Supreme Court has to, base its adjudication of the case on a free assessment of the allegations of the parties and the evidence submitted in the case.

24. In its cover decision KPCC/D-R-173-2012 the KPCC states in paragraph 21 that::

“21. During its 30th session held in September 2012, the Commission ordered that an oral hearing be held in this claim by one of its members pursuant to section 5.4 of Annex III of UNMIK/ADM/DIR/2007/5 as adopted by Law NO. 03/L-079. The Claimant Renata Miosavljević and the Respondent Hadije Quni, as well as two witnesses proposed by both parties, namely O.M and Q. M., attended the hearing on 1 October 2012 in the KPA premises in Prishtinë/Priština. At the hearing, the claimant stated that her family used the claimed property until 1999, which was confirmed by the witnesses O. M. and Q.M. The Respondent acknowledged that the Claimant and her mother had indeed stayed on the property until March 1999, however only as guests.”

25. In paragraph 22 the KPCC states that:

“The Commission finds it highly unlikely that Đ. J. could have sold the property in 1973, but that the Claimant’s family had then lived in the claimed property with no interruption until 1999, when the family left the property as a result of the conflict.”

26. The Supreme Court agrees with this observation

27. The Supreme Court also observes that the alleged sale from Đ. J. to I. H. in 1973 has not been registered, that the sales contract has not been submitted to the KPA or to the Supreme Court, and that there is no allegation that the signatures on the alleged contract have been verified by the court. Possession list nr. 1476 dated 21 March 2003 identifies Đ. J. as the possessor of the disputed property.

28. As L. M. possessed the property with her family until June 1999, the Supreme Court finds that H. Ç. cannot be considered to have been a possessor of the property in the same period.

29. The fact that the inheritance from D.J. to L. M. was not formalized before 2006 does not give H.Ç. any right to the property.

30. The allegation that L. M. lawyer now works at the KPA and has tried to secure have her declared as an owner, is not substantiated by facts and is considered to be of no relevance to the case by The Supreme Court.

31. Based on a total assessment of the submitted evidence the Supreme Court finds it clear that L.M. is the owner of the disputed property. Accordingly the Supreme Court has found the appeal unfounded and has confirmed the decision of the KPCC.

Legal Advice

32. Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies

Elka Filcheva, EULEX Presiding Judge

Dag Brathole, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar