

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-211/13

Prishtinë/Priština,
23 July 2015

In the proceedings of:

S. S.

Appellant

vs.

L. Š.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Willem Brouwer and Rolandus Bruin, Judges, on the appeal against the decision of the Kosovo Property Claims Commission (henceforth: KPCC) KPCC/D/A/187/2013 dated 13 February 2013 (case files registered at the Kosovo Property Agency under Nos. KPA27691 & KPA44771, joined claims), after deliberation held on 23 July 2015, issues the following

JUDGMENT:

1. The appeals filed by S. S. registered under the numbers 211/2013 and 212/2013 are joined in a single case under the number 211/2013;
2. The appeal of S. S. is accepted as grounded;
3. The decision of the KPCC no. KPCC/D/A/187/2013, dated 13 February 2013, (as far as it concerns claims nos. KPA27691 & KPA44771) is modified as follows:
The joined claims nos. KPA27691 & KPA44771 are rejected as not grounded.

Procedural and factual background:

1. On 16 February 2007 D. Š. (henceforth: Claimant) filed a claim at the Kosovo Property Agency (KPA), seeking confirmation of his property right over a parcel of land at 'Slatina', Babush i Serbëve/Srpska Babus in the Municipality Ferizaj/Uroševac, cadastral zone Babush i Serbëve/Srpska Babus parcel no. 132/5 cadastral number P-72209079-00132-5, with a surface of 56 are 88 ca (henceforth: the claimed property). This claim is registered by KPA under nr. KPA27691.
2. On 16 August 2007 M. N.Š., brother of D. Š., filed a claim at the KPA, seeking confirmation of property right of D. Š. over that same claimed property. This claim is registered by KPA under nr. KPA44771.
3. The KPA/KPCC joined the two claims.
4. During proceedings before KPA/KPCC on 12 June 2010 Claimant passed away. His wife L. Š., henceforth: Appellee, inherited the properties of Claimant and requested KPA to have the claim referred on her name and reward the claim in her name.
5. Claimant and Appellee submitted to support the claim *inter alia* to KPA:
 - a. a document: Judgement of the Municipal Court of Ferizaj/Uroševac, P.nr. 329/97, dated 25 August 1998 (henceforth: Judgement of 25 August 1998). According to this document a deed of gift related to nine parcels is annulled and the socially owned enterprise (SOE) Poljoprivredno Dobro is obliged to handover ownership and possession of those nine parcels to Claimant. The claimed property is not mentioned in this judgment.
 - B. a document: Partial Decision of that same Court, I.nr. 1882/98, dated 18 February 1999 (henceforth: Partial Decision). According to the text the Partial Decision is based on the Judgement of 25 August 1998 and a court settlement. SOE Poljoprivredno Dobro is ordered in

this Partial Decision to handover the claimed property to Claimant.

c. a ruling of the Directorate of property, geodesy and cadastre of the Municipality of Ferizaj/Uroševac, dated 26 November 2003 (henceforth: Cadastral Ruling). According to the ruling in possession list no. 187 the claimed property is transferred in the name of Claimant. The ruling is based on the Partial Decision.

d. a possession list nr. 187, Municipality of Ferizaj/Uroševac, Cadastral zone Srpskibabush, dated 2 December 2003. According to this list the claimed property is registered in the name of Claimant.

6. KPA verified the Cadastral Ruling negative because it was not found at the Department of Cadastre. The possession list was found and verified. KPA also found a Certificate for Immovable property rights of 21 March 2008 on which the claimed property is in the name of Claimant. And KPA found a Certificate for Immovable property rights of 26 May 2011 on which the claimed property is listed in the name of Appellee after she inherited the properties of Claimant. KPA verified the Judgement of 25 August 1998 and the Partial Decision negative as these documents could not be found in Court archives.
7. Until 2003 the claimed property was registered in Cadastre as property of the Socially Owned Enterprise (SOE) Agricultural Cooperative DP Poljoprivredno Dobro.
8. The KPA notified the claims on 28 February 2012 and found the claimed property occupied by S.S., henceforth: Appellant. On the claimed property is building a commercial building.
9. Appellant participated in the proceedings before KPA/KPCC as respondent and sent in a response. He states to have rented the claimed property from SOE Pasuria bujqesore in 2002 for 5 years.
10. The KPCC decided on the joined claims that Claimant had established ownership over the claimed property and that the claim stands to be granted in the name of Appellee. In the Certified Decision on the claim KPCC notes that Claimant has established that Appellee is the owner of 1/1 of the claimed property, that Claimant and his brother are entitled to possession over the claimed property and that Appellant has to vacate the property or otherwise will be evicted. In the reasoning of the decision (nrs. 18, 30-32 and 58 of the Cover Decision) KPCC states: Claimant and Appellee submitted the possession list of 2003 and the Certificate of the immovable property rights of 2011. These documents confirm the court decision of 1999. KPCC concludes therefor that Appellee is now the owner of the claimed property. The lease contract of Appellant cannot have legal effect because according to the court decision of 1999 the SOE had to return the claimed property to Claimant.
11. The decision was served upon Appellant on 1 July 2013 and on Appellee on 2 July 2013.

12. Appellant filed appeals against the KPCC decision at the KPA on 12 July 2013. The appeal was served on Appellee on 6 November 2013. She sent a reply to the appeal on 22 November 2013.
13. The Supreme Court registered the appeal under two different file numbers, one in respect of claim KPA27691 (appeal no. GSK-KPA-A-211/13), and one in respect of claim KPA44771 (appeal no. GSK-KPA-A-212/13).
14. Section 408.1 of the Law No. 03/L-006 on Contested Procedure (LCP) provides that the court may join all the cases where two or more proceedings are ongoing in the same court and involving the same persons, if that would ensure court-effectiveness and efficiency of the case. In the cases registered under the numbers GSK-KPA-A-211/13 and GSK-KPA-A-212/13, the Appellant filed only one appeal, implicitly giving his consent to the joining of the cases, as provided by section 408.3 of the LCP. In addition, the Supreme Court observes that the facts, the legal grounds and the evidentiary issues are exactly the same in those cases. Even the parcels, subject of the property right which is alleged in each claim, are the same. The appeals are based on the same explanatory statement and on the same documentation. Moreover the KPCC's cover decision which is appealed is the same one. Insofar as all the elements of the cases are the same, it is obviously more efficient to join the appeals and to examine them in one single judgment. This also will minimize the court fees. The aforementioned cases shall become one single case registered under the number GSK-KPA-A-211/13.
15. The Supreme Court sent an order to the Municipal Cadastral Office in Ferizaj/Uroševac, dated 9 December 2014 to answer the following questions:
 1. *Submit the legal ground for registration of the cadastral parcel no. 132/5, at the place called "Sllatine", with a surface of 56 ar and 88m², Cadastral Zone of Babush i Serbeve, registered under the Possession List no. 187;*
 2. *Submit the original Judicial Settlement of the Municipal Court of Ferizaj/Uroševac E.nr. 1882/98 dated 17 February 1999;*
 3. *Submit the Partial Ruling of the Municipal Court E.nr. 1882/98 dated 18 February 1999;*
 4. *Submit the Decision of the Department of Property, Geodesy and Cadastre of the Municipality of Ferizaj/Uroševac, dated 26 November 2003, regarding the implementation of the Partial Ruling nr.1882/98 dated 18 February 1999, which relates to the implementation of changes in cadastral records referring to the property mentioned above (cadastral parcel no. 132/5); and*
 5. *Submit the background of cadastral changes including detailed background regarding the said property-parcel.*
16. The cadastral office answered on 15 December 2014. The office submits some documents related to the request, dated 25 March 2003, to register the claimed property in the name of Claimant. From the Partial Decision is only sent a copy. From the other court documents requested the office did not sent anything, neither original nor copy.

17. The Supreme Court ordered the Basic Court of Ferizaj/Uroševac on 11 February 2015 (the order is dated mistakenly 11 February 2014) to submit the original Judgement of 25 August 1998 and the original Partial Decision. On 2 March 2015 the Basic Court answered that these court decisions are not found in their records and archives. The court assumes these documents might be found in the parallel court in Shtërpçë/Štrpce.

Allegations of the parties

18. Appellant alleges that not Claimant or Appellee is the legitimate owner of the claimed property, but SOE AC Pasuria Shogerore. He indicates that the claimed parcel is not mentioned in the Judgement of 25 August 1988 and so Claimant did not obtain recognition of an ownership right over the claimed property. He disputes the validity of the Partial Decision and the Cadastral Decision of 2002/2003 that should be the basis of the possession list nr. 187 and to transfer ownership in the Cadastral registration to Claimant.
19. Appellee alleges that Claimant became owner of the claimed parcel based on the Judgement of 25 August 1998 and the Partial Decision.

Legal reasoning:

Merits

20. According to Section 3.1 of Law UNMIK 2006/50 – as far as concerned in this case - KPCC has the competence to resolve conflict-related ownerships claims involving circumstances directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999 (henceforth: the armed conflict) with respect to private immovable property, including agricultural property, where the claimant is not now able to exercise such property rights.
21. KPCC reasoned in its Decision that from the Partial Decision follows that the SOE DP Poloprivredno Dobro was obliged to return the claimed property to Claimant. KPCC also refers to the Possession list of 2003 listing Claimant as owner of the claimed property.
22. Appellee alleged that the Partial Decision was based on the Judgement of 25 August 1998. In this Judgement was decided on a claim of Claimant. Claimant claimed in that procedure annulment of a deed of gift of land of his father N. Š. in 1949 to the State (laid down in a decision of the National Committee of village Kosin). The Municipal Court of Ferizaj/Uroševac accepted this request for annulment of the donation due to existence of pressure and coercion to do so. In the Judgement of 25 August 1998 SOE Poljoprivredno Dobro is obliged to handover ownership to

Claimant and Claimant is allowed to register his ownership rights into the cadastral office registry of the properties with the next specifications:

Place	Cadastral parcel number	Surface (ha)
Selijski Gaj	1160	0.81.51 + 0.03.40
Selijski Gaj	1171	0.31.87
Selijski Gaj	1172	0.64.72
Selijski Lug	61	0.22.39
Selijski Lug	108	0.09.60
Selijski Lug	109	0.25.98
Selijski Lug	118	0.53.98
Selijski Lug-velika njiva	119/1	0.69.54
Selijski Lug-veliki brtet	119/2	0.08.83

As follows from this list the claimed parcel (known as Babush i Serbëve/Srpska Babus parcel no. 132/5 with a surface of 0.56.88 ha) is not mentioned in this Judgment. That also means that the Partial Decision cannot be based on the Judgement of 25 August 1998.

23. The claimed property is mentioned in the Partial Decision. The Supreme Court notes that the verification by KPA did not result in positive verification of the Partial Decision itself as the document was not found in the Court archives. Also the answers to the court orders mentioned in paragraphs 16 and 17 here fore do not result in a positive verification of the Partial Decision.
24. The Supreme Court assumes that until the date of the Partial Decision a SOE was owner of the claimed property and not Claimant or Appellee. From the fact that the claimed parcel is not mentioned in the – also not positive verified - Judgement of 25 August 1998 and the Partial Decision is not verified positive, follows that Appellee did not substantiate and did not prove, that Claimant gained or regained ownership over the claimed parcel in 1998/1999. The fact that later on, in 2003, with respect to the claimed property Claimant was registered as owner cannot lead to another conclusion, because this registration is based on the non-verified Partial Decision. Therefor the (positively verified) Possession List of 2 December 2003 can also not prove that the claimed property is lawfully registered in the name of Claimant instead of SOE Kooperativa Bujqesore. So the conclusion of KPCC that Appellee substantiated to be the owner of the claimed property is wrong. The claim must be rejected.

Conclusion

25. The Supreme Court concludes that the appeal is grounded and the KPCC Decision must be modified as in the enacting clause.

Legal Advice

Pursuant to Section 13.6 of Law UNMIK 2006/50 this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Rolandus Bruin, EULEX Judge

Willem Brouwer, EULEX Judge

Urs Nufer, EULEX Registrar