

**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-134/13

**Prishtinë/Priština,
26 March 2014**

In the proceedings of:

S. L.

Village G../G.

Municipality of F./U.

Appellant

vs.

S. I.

V. D. K.7

11160 B./S.

Claimant/ Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Esma Erterzi, EULEX Presiding Judge, EULEX Judge Elka Filcheva-Ermenkova and Judge Shukri Sylejmani, on the appeal against the decision of the Kosovo Property Claims Commission KPPC/D/C/97/2010 (case file registered at the KPA under the number KPA00928), dated 7 December 2010, after deliberation held on 26 March 2014, issues the following:

JUDGMENT

1. The appeal of S. L. against the decision of the Kosovo Property Claims Commission KPPC/D/C/97/2010, dated 7 December 2010, is rejected as unfounded.
2. The decision of Kosovo Property Claims Commission KPPC/D/C/97/2010, dated 7 December 2010 regarding the claim registered at the KPA under the number KPA00928, is confirmed.

Procedural and factual background:

1. On 13 June 2007, the claimant S. I. filed a claim with Kosovo Property Agency seeking repossession of the parcel no 251, in the cadastral zone of Gaçkë/Gatnje, in the Municipality of Ferizaj/Uroševac, with the surface of 85 Ar, 55 meter square.
2. To support his claim, he submitted a copy of the certificate no UL-72217017-00264 issued on 14 December 2007 by the Municipal Cadastral Office of Ferizaj/Uroševac. This copy of the certificate establishes that the said cadastral parcel is registered in the name of B. I. and S.I. in the amount of ½ shares of the claimed parcel. According to the Action Report of the KPA verification unit, the claimant confirms that in the possession list his surname appears as “I.” whereas in fact it is “I.”.
3. The claim was registered at the KPA under KPA00928.
4. The notification of the claimed parcel was carried out through publication in the KPA Notification Gazette no 8 and UNHCR Office Bulletin. No notice of participation to the proceedings was filed by then.
5. On 7 December 2010, Kosovo Property Claims Commission (KPCC), through its Decision KPPC/D/C/97/2010, granted the claim to the claimant. The certified Decision of the KPCC, dated 9 March 2011, specified the share of the claimant as ½ of the whole parcel.
6. The land was put under the administration of the KPA. On 28 May 2013, the KPA prepared a report on the condition of the property and found out that S. L. had been cultivating the land who claimed ownership rights over the said parcel. He alleged that he bought it in 1984.
7. On 3 June 2013, S. L. (henceforth: the appellant) filed an appeal as well as a submission addressed to the KPA.

8. The appeal was served on the claimant on 19 December 2013. He did not file a response to the appeal.

The arguments of the parties

9. The appellant did not contest either the registration of the land in the name of the claimant or his surname (as to I. or I.). In his appeal, the appellant alleges that he bought it in 1984 but this sales contract could not be registered due to the circumstance and laws. In his submission addressed to the KPA, he presented the following details that:
- He purchased it from S. I. in the presence of S. S. and M. L.;
 - The agreed price was 100.000.000,00 dinars;
 - He paid 71.000.000,00 dinars in August and the remaining part in the amount of 29.000.000,00 dinars at the beginning of September;
 - He has no documents since his house was burnt in 1999.
10. The claimant did not file a response to the appeal; however, he claims that he lost the possession during the conflict 1 June 1999. He claims to be the owner of the property registered under his name and asks for repossession.

Legal reasoning:

Jurisdiction

11. The KPA Appeals Panel of the Supreme Court notes that KPCC has jurisdiction over the claim since it falls under the categories of the claims stipulated in Section 3.1 of UNMIK Regulation 2006/50 as amended by Law No 03/L-079. The claimant maintains that the loss of possession derives from the circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999. The appellant has not produced evidence on the contrary. KPA Appeals Panel has jurisdiction over the appeals submitted against the decisions of KPCC.

Admissibility of the appeal

12. The appellant was not a party in the proceedings before the KPCC. According to Art. 12.1 a decision by the KPCC can be appealed by a “party” before the KPCC. However, the Supreme Court has stated in numerous cases, *inter alia* in case nr. GKS-KPA-A-109-2012 that this circumstance cannot go to the detriment of an appellant with a legal interest who has not been correctly notified of the claim.
13. In the present case the possessor/usurper of the property was not mentioned in the claim or notified of the claim. By mistake, the KPA notification sign was put up on the wrong property.

An announcement was then made in the Notification Gazette of the KPA and the UNHCR Bulletin. The conditions of such announcement are not met in this particular case.

The Supreme Court finds that the KPCC has not made “reasonable efforts” to notify third persons with a legal interest of the claim, as required by Section 10.1 of UNMIK Regulation 2006/50, as amended by Law No. 03/L-079 (*hereinafter* Law 03/L-079). Without having made an attempt to find the correct parcel and put a notification sign on it the KPCC was not authorized to use the method of announcement in the Notification Gazette. Accordingly the appellant, who has a legal interest in the case, was not aware of the claim, and did not have a possibility to respond to the claim. He cannot be deprived of this opportunity.

14. Sali Lima appealed the KPCC decision within 30 days, as foreseen by in Section 12.1 of Law 03/L-079, after he was made aware of the case and the decision of the KPCC. The Supreme Court finds the appeal timely.
15. The appeal is admissible.

Merits of the appeal

16. Following the review of the case file and appellant’s allegations, pursuant to provisions of Article 194 of LCP, the Supreme Court found that the appeal is unfounded.
17. The appellant’s allegations that he bought the claimed immovable property from the claimant in 1984 and that during the transaction S. S. and M. L. were present do not represent valid and legal evidence to confirm the ownership right over claimed properties as stipulated in Article 4 paragraph 2 of the Law on Transfer of Immovable Property (Official Gazette of RS no. 43/81). According to these legal provisions, in order to acquire the ownership right over a given property one needs a written contract, with the signatures having been certified by the competent authority. In the concrete case such contract is not presented. The copies of the slips submitted by the appellant, which lack the signature of the claimant, do not serve as documentary evidence. In any case, they cannot replace the written contract and certification by the court as required by the law.
18. Therefore, the Supreme Court concludes that the KPCC decision is right and lawful and that the same contains sufficient reasoning for the factual determination background of the law based decision. The appealed decision does not contain any essential violations of the material and procedural laws foreseen by the Article 12.3 of the Law 03/L-079. As a consequence of this and based on the Article 13.3 (c) of the Law 03/L-079, the appeal stands to be rejected as unfounded.

Legal Advice

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

Esma Erterzi, EULEX Presiding Judge

Elka Filcheva-Ermenkova, EULEX Judge

Shukri Sylejmani, Judge

Urs Nufer, EULEX Registrar