

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-074/13

Prishtinë/Priština, 8 July 2015

In the proceedings of:

F.G.

Pejë/Peja

Appellant

vs.

N. Z. S.

Serbia

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 KPCC/D/A/155/2012 dated 6 June 2012 (case file registered at the KPA under No. 34561), after deliberation held on 8 July 2015, issues the following:

JUDGMENT:

The appeal of F. G. against the Decision of the Kosovo Property Claims Commission KPCC/D/A/155/2012 (regarding case file registered at the KPA under the number KPA34561), dated 06 June 2012, is dismissed as inadmissible.

Procedural and factual background:

1. On 27 November 2007, Z. S., (henceforth: claimant), filed a claim at the Kosovo Property Agency (KPA) seeking as a property right holder confirmation of ownership right and repossession over parcels no. 667, 668/1, 668/2, 669 with a surface 5 Ha 10Ar and 71 m², located at Ljumbarda village, Deçane/Decan Municipality (hereafter referred as: the claimed property). He stated that the he lost the possession over the property on 12 June 1999 due to armed conflict 98/99 in Kosovo and that the property was illegally usurped.
2. The claim was registered with the KPA under case no KPA34561.
3. On 27 November 2009, during the proceedings before KPA, claimant passed away. KPA contacted the son of claimant, N. Z. S. (henceforth Appellee). Appellee stated to be the inheritor of the claimed property and to uphold the claim of his father in his name.
4. With the claim claimant and appellee submitted *inter alia* the following documents:
 - Contract no.333-88, date 31 May 1998, on division of immovable properties between five inheritors of M. S., certified by the Municipal Court of Deçane/Decan. According to this contract after the division claimant was the sole owner of the claimed property;
 - Death certificate of Z. S. dated 22 December 2010, issued by Municipality of Belgrade. According to this certificate claimant passed away on 27 November 2009.
5. The abovementioned documents were all positively verified by KPA verification team.

6. On 9 November 2010 the KPA notification team notified the claim by putting a sign where the parcels were allegedly located. According to the data in the Notification Report, dated 9 November 2010, the old numbers of the parcels are changed respectively:

667	to	250
668/1 and 668/2	to	249
669	to	248

- During the notification an interested person, B. G. (henceforth: Respondent), claimed a legal right over the claimed property and signed the notice of participation as a responding party.
7. Respondent claimed ownership over the claimed property asserting that it belonged to her grandfather. Later on, during the proceedings Respondent and her lawyer stated that she and her family do not claim the claimed property but other parcels of immovable property in which the family of claimant is (also) involved.
8. KPA ex officio added to the file a Certificate for the immovable property rights, dated 4 June 2012, nr. UL-70505059-00101, issued by Municipal Cadastral Office in Deçane/Decan. According to this certificate Appellee is owner of the claimed property, in this certificate indicated with the parcel numbers 248, 249 and 250.
9. On 6 June 2012, with decision KPPC/D/A/155/2012, the KPCC decided to grant the claim with the reasoning in paragraphs 18, 30 and 31, that the Claimant's son has shown sufficient evidence that he is the current owner of the claimed properties and that Respondent no longer challenges the claim.
10. In the Certified decision is mentioned as claimant: 'Z. S.'. In the Decision *inter alia* is found that:
- "(a). The Claimant as detailed above has established that N. Z. S. is the owner of 1/1 of the claimed property;*
- (b) Z. S. is entitled to possession of the claimed property;"*
11. The decision was served on respondent on 18 December 2012 and on Appellee on 23 May 2013.
12. On 5 March 2013 F. G. (henceforth: Appellant) filed an appeal to the Supreme Court, challenging the KPCC decision. With the appeal he submitted *inter alia* these documents:

- Contract on purchase of the immovable property no.183/13, dated 27 February 2013, concluded between D. Sh. and F.G. and certified by the court; the object of the contract are the parcels with the numbers 153 and 154 in Livadhet e Malit-Breg, Deçane/Deçan;
 - Certificate for the immovable property no.UL70505059-00102 dated 4 March 2013, issued by Municipal Cadastral Office of Deçane/Deçan. The Certificate relates to the parcel with the numbers 153 and 154/3.
13. The appeal was served on Appellee on 23 may 2013.
 14. Appellee filed a response to the appeal, received by the KPA on 21 June 2013. In the response he alleges that the appeal is inadmissible because Appellant was not a party in the claim procedure before the KPCC. In this response he files a counterclaim. He alleges that the Certified decision on the claim contains a mistake where is written that Claimant, father of Appellee, is entitled to the ownership right over de claimed property, while Claimant passed away and Appellee inherited the claimed property. He further requests the Supreme Court to change the enacting clause of the Certified KPCC Decision accordingly.
 15. The reply is sent to Appellant on 20 March 2015.
 16. On 20 January 2015 the Supreme Court with an order requested from the Appellant to clarify within three weeks of time in what capacity and based on which facts he is entitled to file an appeal.
 17. According the receipt of the KPA, the Appellant received the order of the Court on 3 February 2015.
 18. Appellant did not respond to the Court order within the time limit of three weeks.

The allegations of the parties:

19. The appellant with his appeal challenged the KPCC's decision. He refers to the purchase contract of the immovable property no.183/13, dated 27 February 2013, concluded between D. Sh. and F.G. and certified by the court. The object of the contract is the parcels with the numbers 153 and 154 in Livadhet e Malit-Breg, Deçane/Deçan.

20. On the other side Appellee states that the appeal is inadmissible, because Appellant was not a party before KPA proceedings. He further alleges that the properties Appellant is claiming are not the same with the claimed parcel for which is decided by KPCC in the appealed KPCC decision.

Legal reasoning:

Admissibility of the appeal

21. The appeal of F. G. is inadmissible.
22. According to Section 12.1 of UNMIK Regulation 2006/50 on Resolution of Claims Related to Immovable Property, Including Agricultural and Commercial Property as amended by Law No. 03/L-079 (hereinafter: Law No. 03/L-079), a party may file an appeal within thirty (30) days of the notification to the parties by Kosovo Property Agency of the decision of Property Claims Commission.
23. Section 10.1 of Law No. 03/L-079 provides that upon receipt of a claim, the Executive Secretariat of KPA shall notify and send a copy of the claim to any person other than the claimant who is currently exercising or purporting to have rights to the property which is subject of the claim. In Section 10.2 of the same law is stipulated that “any person other than the claimant who is currently exercising or purporting to have rights to the property which is the subject of the claim and/or any other person who may have a legal interest in the claimed property shall be a party to the claim and the related proceedings provided that such person informs the Executive Secretariat of his or her intention to participate in the administrative proceedings within thirty (30) days of being notified of the claim by the Executive Secretariat [...]”.
24. From these provisions in Law No. 03/L-079 follows that only a party in the first instance proceedings has the right to file an appeal against the Decision of the KPCC. According to the case law of the KPA Appeals Panel of the Supreme Court, the mere exception of this rule comes to the surface if and when the *interested* person who claims a right over the property in dispute has not been aware and could not have been aware of the claim filed with the KPA due to lack of proper notification of the claim and thus was unable to file a notice of participation.

25. The Appellant was not a party in the proceedings before KPA and he did not explain whether he has any relation with the Respondent in the first instance. He further did not explain if he has a legal interest in the claim on the claimed property, because the evidence he sent in appeal do not relate to the claimed property but to other parcels. Since there is no justification as to why he did not participate in proceedings in the first instance before KPA and did not prove he has a legal interest in this case such failure goes to his detriment.
26. In this regard the Supreme Court also notes that the representative lawyer of the Respondent in first instance when contacted by KPA regarding the claimed parcels confirmed that the G. family does not contest the ownership of Appellee of the claimed parcels, registered in the name of N. Z. S. but the parcels related to his cousins.
27. The Supreme Court finds it useful to note that the subject matter of the claim in no KPA 34561, concluded with the Decision No KPPC/D/A/155/2012, relates to the parcels no. 667, 668/1, 668/2, 669 with a surface 5 Ha 10Ar and 71 m2. The Appellant's allegations relate to the parcels no.153 and 154 located on the place called "Livadhet e Malit-Breg".
28. As the appeal of Appellant is inadmissible, the Supreme Court cannot decide on the merits of his appeal.
29. Regarding to appellee's request lodged in the response to the appeal, the Supreme Court assesses that appellee has to request KPCC to correct the Cover Decision. It is not for the Supreme Court on such a request in a response to an appeal to modify the appealed decision.

Conclusion

30. Based on the abovementioned reasons and pursuant to Section 13.3 (b) of the Law No. 03/L-079 and Article 195.1 subparagraph (a) of Law on Contested Procedure is decided 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

Willem Brouwer, EULEX Judge

Rolandus Bruin, Judge

Urs NUFER, EULEX Registrar