

**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-145/2014

**Prishtinë/Priština,
24 February 2016**

In the proceedings of

E. M.

Appellant

Vs.

V. M.

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Anna Bednarek and Beshir Islami, Judges, on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/C/222/2013 (case file registered at the KPA under No. KPA47958), dated 27 November 2013, after deliberation held on 24 February 2016 issues the following

JUDGMENT

1. The Appeal of E. M. against the Decision of the Kosovo Property Claims Commission KPCC/D/C/222/2013, dated 27 November 2013, is rejected as unfounded.
2. The Decision of the Kosovo Property Claims Commission KPCC/D/C/222/2013, dated 27 November 2013, is confirmed as far as it regards the Claim registered with the KPA under No. KPA47958.

Procedural and factual background:

1. On 18 October 2007, the Appellee V. M. filed a Claim with the Kosovo Property Agency (KPA), seeking the repossession of the yard with the surface 0.04.01 ha consisting the cadastral parcel number 4/12 of the total surface 99m² located in Carallug/Crni Lug, registered in the Possession List No. 129 (hereinafter referred to as: the claimed property). The Appellee stated that she had obtained the property rights over the claimed parcel on the basis of the Contract on Lifelong Support of 26 March 1973. She further added that there was a house on the parcel, but it was destroyed by the person who is using currently the land. According to V. M. E. M. constructed another residence building on the parcel. For those reasons the Appellant requested the KPCC to order the repossession of the claimed property and the compensation for the damage caused by E. M.. Sha stated that the loss of the property took place on 12 June 1999.
2. Together with the Claim V. M. submitted to the KPA:
 - The Contract on Lifelong Support entered into on 26 March 1973 between P. M. and V. M., on the basis of which the latter person took the responsibility to provide her mother P. M. with a lifelong support, while the care receiver provided in return the claimed property as an inheritance. The signatures of both parties were confirmed by the Municipal Court in Gjyarakoc/Đurakovac on 26 March 1973 under the number Ov. 66/73;
 - The Death Certificate of P. M., from which it appears that the mother of the Appellant deceased on 9 July 1988;

- The Birth Certificate of the Appellee in which the names of her parents are indicated;
 - The Contract on Sales entered into between A.B. as seller and P. M. as buyer of the immovable property described in the Title Deed No. 01-346 and registered in the Possession List number 129, classified as the parcel in surface area of 0.05,00 ha on which a roofed house was placed. The signatures of both parties were confirmed by the Municipal Court in Gjyrakoc/Đurakovac on 19 January 1972 under the number Ov. 31/72;
 - The Copy of the title Deed No. 1-346/68 of 3 June 1968 certified by the Municipal Court in Gjyrakoc/Đurakovac and registered under T. No. 1/72 and 2/72. It confirmed the ownership of the cadastral parcel 4/12, classified as unfertile, of the total surface of 0.05.00 ha, registered in the Possession List No. 129 CM in Carallug/Crni Lug of A. I. B..
3. The case was registered under the number KPA47958
 4. The verification of the claimed property was done on 11 May 2010 using the cadastral data and based on Ortophoto and GPS coordinates. The Claim was notified on 8 September 2008. According to the Notification Report the claimed property was found to be a newly constructed house and a yard. At the time of the visit the premise was found to be occupied by E. M., who signed a notice of participation and declared to claim the legal right over the property.
 5. On 25 November 2011 the Appellant E. M. filed a Reply to the Claim and demanded a legal right over the property. Together with the Reply he submitted to the KPA:
 - The copy of the Extract from the Possession List number 108 of the cadastral municipality in Carollukë/ Carallug/Crni Lug issued by the Municipal Directorate in Istog/Istok on 27 June 2003 mentioning the P.Sh. Rehabilitation and recreational center as the owner of the land parcel;
 - The copy of the Plan of 27 June 2003;
 - The copy of the Certificate for the Immovable Property Rights number UL-70806056-00569 issued on 15 May 2006 by the Kosovo Cadastral Agency listing the brother of the Appellant: N. R. M. as the owner of the parcel and the building on it;

- The copy of the Employment Attestation of N. R. M. issued by Medical Institution of Physical and Rehabilitation Therapy “Banja” in Banja e Kernjinës/Banja on 16 May 2003;
 - The copy of the Ruling of the Municipality of Istog/Istok, Directorate of Urbanism and Ecology number 04.351-247/2003 dated 17 July 2003 giving the permission to N. M. to construct the building on the claimed property;
 - The copy of the summons for the defendant to appear before the Municipal Prosecutor in Pejë/Peč in the case regarding the offense of unlawful occupation of the real property;
 - The copy of the Judgment of the Municipal Court in Istok/Istog rendered (in absentia) in the case number C 203/05 on 21 April 2005 granting the claim of N.M. and confirming his ownership rights over the claimed property and over the building constructed on it. The respondent in the case was Rehabilitation and Recreation Centre in Banja e Kernjinës/Banja, who did appear before the court and did not file any reply to the claim.
 - The copy of the Certificate issued the Municipality of Istog/Istok, Directorate of Urbanism and Ecology number 04.463-807/2003 dated 13 August 2003 stating that there was no real property registered under the name of P. M.;
 - The copy of the Permission issued by Rehabilitation and Recreation Centre in Banja e Kernjinës/Banja on 15 May 2003, protocol No. 340 to N. M. giving the consent to use the claimed property, registered as the socially owned property for unlimited period of time to construct a housing structure.
6. According to the Verification Report dated 25 November 2008 the Contract on Sale, Title Deed and the Contract on Lifelong Care were positively verified by the KPA. From the Consolidated Verification Report dated 15 November 2010 The copy of the Certificate for the Immovable Property Rights number UL-70806056-00569 was also positively verified by the KPA.
7. The KPA obtained ex-officio an electricity consumers’ list from the year 2003 showing that the Appellee was still listed as a consumer at the address of the claimed property.

8. The KPA contacted the SOE Rehabilitation and Recreation Centre in Banja which replied that it was not interested in taking part in the proceedings as the SOE had undergone the privatisation run by the Privatisation Agency of Kosovo.
9. On 27 November 2013, the Kosovo Property Claims Commission (hereafter to be referred to as: the KPCC), through its Decision KPCC/D/R/222/2013 (hereafter to be referred to as: the KPCC's Decision) granted the Claim and decided that the Appellee had established that she was the owner of the claimed property and had use rights over it, as well as she was the owner at the date of destruction of the claimed residential property. The KPCC ordered though that V. M. was entitled to possession of it. The KPCC additionally decided to dismiss the Claim for compensation for physical damage to, or loss of use of the claimed property due to lack of jurisdiction.
10. In the reasoning of the Decision, the KPCC noted that the Appellee's family acquired ownership over the claimed property in 1972 based on a court certified contract with a third party who himself before acquired legally validly ownership over the claimed property from the legal entity "Ligja" in Pejë/Peč, the legal predecessor to the socially owned enterprise "Enti i Mjekesise per Terapi Fizikale dhe Rehabilitim". Consequently, according to the KPCC, the latter SOE could not have validly allocated a use right to the Appellant's brother in 2003, as its legal predecessor had already disposed of the claimed property a long time before. Therefore, for the KPCC, the allocation decision could not be considered as valid evidence of the Appellant's use rights over the claimed property. For the same reason the Judgment of the Municipal Court in Pejë/Peč could not be considered by the Commission as having invalidated the Appellant's property rights. In the view of the KPCC, as the Appellee hadn't participated in the in the proceedings and the judgment ignores the prior disposition of the claimed property by the predecessor of the SOE, the judgment itself was based on an incomplete determination of the relevant facts.
11. The KPCC's Decision was served upon the Appellee on 6 August 2014. The Appellant received it on 28 March 2014. On 28 April 2014 the Appellant filed an Appeal against the KPCC's Decision.

Allegation of the parties

12. The Appellant requests the Supreme Court of Kosovo to annul the KPCC's Decision, to approve the Appeal and return the case to the KPCCC for the reconsideration or to amend it and acknowledge the property rights over the claimed property of N. M. In the Appeal he indicated that the KPCC's Decision is based on erroneous and incomplete establishment of facts, as well as, it involves breach of substantive and procedural law. To support the Appeal the Appellant submitted the same documents that were previously filed with the KPCC. The Appellant claimed that his arguments were not taken into consideration, as well as the evidence submitted by him was ignored by the Commission. This way the Decision did not establish the facts completely. He added that the Appellee never attempted to transfer the property into her name and the Appellant was using it for more than 20 years, being a bona fide owner.
13. On 22 August 2014 the Appellee filed a Response to the Appeal requesting to reject the appeal as unfounded as the allegations of the Appellant were fully incorrect.

Legal Reasoning

14. The Supreme Court of Kosovo found that the appealed KPCC's Decision was issued in full and fair determination of the factual situation and on such ground both the material and procedural law was properly applied; therefore, the Appeal is rejected as unfounded.
15. The Appellant alleged to have the ownership right over the property. As the evidence confirming his title the Appellant mentioned the Judgment of the Municipal Court in Istok/Istog rendered (in absentia) in the case number C 203/05 on 21 April 2005 granting the claim of N. M. and confirming his ownership rights over the claimed property and over the building constructed on it, as well as and the Ruling of the Municipality of Istog/Istok, Directorate of Urbanism and Ecology number 04.351-247/2003 dated 17 July 2003 giving the permission to N. M. to construct the building on the claimed property. In the opinion of the Supreme Court those documents may not be considered as proving his ownership right over the claimed property. The Supreme Court evaluated those documents and contends they were not rendered in accordance with the law in force at the time of the issuance. For those reasons the mentioned documents are not to be taken into account while deciding on the Appeal. Moreover those documents submitted by the Appellant have to be considered in relation to the evidence submitted by the Appellee. The analysis of all of the documents submitted by the parties leads to the

same conclusion as the one reached by the KPCC. The thorough analysis of the evidence presented by the Appellee leads to the conclusion that mother of the Appellee acquired the property rights to the claimed property lawfully. The mere fact, that the transfer of the property right was not updated in the cadastral records for no reason affects the assessment of the validity of the sales contract of 1968 as the law in force in 1968 provides. The fact though that the claimed property had been sold by the predecessor of the SOE in 1968 to a person who subsequently sold the land to the mother of the Appellee meant that the same parcel could not have been transferred many years later by the successor of the SOE. As the title to the property was transferred by the SOE in the year 1968, it could become the property of the succeeding entity (SOE). Therefore the successor could not have validly disposed of the claimed property and transfer it or grant a permission to use to any other person, including the Appellant. Any legal action that would have as a scope the sale or other disposition of the property by the SOE could not have any legal effects, as the rights may only be transferred by the person who has the title to them. In that sense granting use rights or property rights to the Appellant by whoever had an intention to do so, but not by the owner could not be considered as changing the ownership of the claimed property. Consequently, the documents submitted by the Appellant, as the KPCC correctly considered, do not prove the title to it and as such could not be assessed as proving his allegations. For that reason the arguments of the Appellant did not bring the Supreme Court to different conclusions that those drawn by the KPCC.

16. The Supreme Courts underlines once again, that considering what was mentioned above the documents like the permission of the SOE of 2003 or the allocation by it remain without legal effect on the conclusion of the Court. The same goes for the Judgment of the Municipal Court: the Appellee was not a party to the proceedings so it is not binding to her.

17. It is worth mentioning here that all the documents submitted by the Appellant bear the dates from the year 2003 onwards, while the loss of possession by the Appellee took place in 1999. The Appellant never questioned the statement of the Appellee with regard to the date of loss of the possession of the claimed property. This circumstance is though uncontested in the proceedings. The mandate of the Commission is to examine the cases "directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999." That means that the scope of the examination of the

Commission is to verify the following elements: who was in possession of the claimed property before 27 February 1998, who is in the possession of it now, when and for which reason the possession was lost during the period between 27 February 1998 and 20 June 1999. The Supreme Court observes that the Appellee had the claimed property in her possession during the mentioned conflict, lost it due the circumstances related to it and now should be entitled to re-possess it. The Appellant instead raises in the Appeal the circumstances that allegedly took place after the conflict. Those elements may only be proven during the proceedings before the competent Municipal Court.

18. This leads the Supreme Court to the conclusion that the KPCC has taken a correct Decision for the right reasons when accepting the Claim.

19. Consequently, the Appellant's Appeal is rejected as unfounded and the appealed KPCC's Decision is confirmed as correct and based on properly applied law, pursuant to Section 13.3 (c) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079.

Conclusion

20. Based on the aforementioned and in pursuant to Section 13.3.(c) of the Law No. 03/L-079 and Article 195, paragraph 1(d) of the Law on Contested Procedure, it is decided as in the enacting clause of this Judgment.

21. This Judgment has no prejudice to the Appellant's right to refer his case to the competent court outside the jurisdiction foreseen by provisions of Section 3.1 of Law no. 03/L-079.

Legal Advice

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.

Sylejman Nuredini, Presiding Judge

Anna Bednarek, EULEX Judge

Beshir Islami, Judge

Sandra Gudaityte, EULEX Registrar