

**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-064/13

**Prishtinë/Priština,
16 July 2014**

In the proceedings of:

H.L

Appellant

vs.

S.B.P

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Dag Brathole, Presiding Judge, Elka Filcheva-Ermenkova and Gyltene Sylejmani, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/112-2011 dated 22 June 2011 (case file registered at the KPA under No. KPA44058), after deliberation held on 16 July 2014, issues the following

JUDGMENT:

- 1. The appeal of H.L, is accepted as grounded.**
- 2. The decision of the Kosovo Property Claims Commission KPCC/D/A/112-2011 dated 22 June 2011, is annulled and the case returned to the KPCC for reconsideration.**

Procedural and factual background:

1. On 5 June 2007 S.B.P filed a claim at the Kosovo Property Agency (KPA) seeking confirmation of his ownership over parcel 1 083, total area of 31 ar 12 m², class 4 field, cadastral zone Gërmovë/Grmovo, Possession List no. 31 issued by the Department for Cadastre, Geodesy and Property of the municipality of Viti/Vitina.
2. In Cover Decision KPCC/D/A/19/2008 dated 20 June 2008 The Kosovo Property Claims Commission (KPCC) awarded the claim in an uncontested proceeding. The claim was awarded in the name of the claimant's father, B.V.P. However this decision was overturned on 12 May 2010 because the notification of the claim had been made on a wrong location.
3. On 13 July 2010 a notification of the claim was made in the KPA Notification Gazette and UNHCR property office BULLETIN. A notification was also left at the entrance/exit and village kiosk in Gërmovë/Grmovo in Viti/Vitina.
4. On 22 June 2011 in Cover Decision KPCC/D/A/112/2011 the KPCC awarded the claim in the name of the claimant, S.B.P, after an uncontested procedure. At this time it was verified that B.V.P died 1 June 2000.
5. The KPCC decision was served on S.B.P on 21 February 2012.
6. On 24 January 2013 H.L appealed the KPCC decision, claiming that he was an interested party. The appeal was served on the wife of S.B.P, V.P, on 6 August 2013. She responded to the appeal 14 August 2013. With the response she submitted a death notice stating that S.B.P died on 10 April 2010.
7. The Supreme Court received the case file on 19 November 2013. On 21 November 2013 the Supreme Court gave an order to the parties, requesting answers to specific questions mainly concerning who possessed the property during the period of the armed conflict in Kosovo in 1998/1999. H.L has responded to the order on 17 December 2013. At the time of the judgment, the order has not been served on V.P.

The allegations of the parties

8. H.L. states that he did not take part in the proceedings before the KPCC, because he was not aware of the claim or the proceedings. He first became aware of the claim when he received the decision of the KPCC.
9. H.L. alleges that he bought parcel no. 1 083 from V.B.P by written contract of purchase dated 3 April 1989. The purchase price was DEM 50 400. H.L. states that he has been continually interested in transferring the parcel into his name, but when he bought the parcel this was not possible because of discriminatory laws prohibiting properties that were in the name of Serbs to be transferred to Albanians.
10. According to H.L, V.P has confirmed the transaction, but she nevertheless claims to have inherited the property which was recorded in the name of her father-in-law.
11. The municipal court of Viti/Vitina has made a temporary ruling on 7 December 2012 ordering V.P not to alienate or to conclude any real estate contract regarding the parcel. The temporary ruling remains in force until the Municipal Court of Viti/Vitina makes a final decision or until the measure is changed by the court.
12. V.P alleges that H.L was not a party before the KPCC, and that he therefore according to Art. 10 and 12 of the UNMIK Regulation 2006/50 on the Resolution of Claims relating to Private Immovable Property, including Agricultural and Commercial Property as amended by Law No. 03/L-079 (*hereinafter Law No. 03/L-079*) has no right to appeal the decision of the KPCC to the Supreme Court. The appeal is therefore inadmissible.
13. The property was never sold by B.V.P or S.B.P to H.L. The alleged contract which has been submitted by H.L. , is a forgery.
14. V.P gained ownership over the property through inheritance decision of the Municipal Court in Viti/Vitina T.no. 69/2011 dated 17 August 2011.
15. H.L initiated court procedure before the Municipal Court of Viti/Vitina on 7 December 2012 at least five years after the procedure was initiated at the KPA. Law No. 03/L-079 is therefore applicable in accordance with Art. 18 of the law.
16. V.P ownership is protected by Art. 1 of Protocol 1 to the European Convention of Human Rights, and Art. 14 of the convention.

Legal reasoning

Admissibility of the appeal

17. The appeal is admissible although the appellant has not been a party in the proceedings before the KPCC. This circumstance cannot go to the detriment of the appellant as indeed he had not been correctly notified of the claim. The notification was done by publication of the claim in the Notification Gazette of the KPA and the UNHCR Bulletin, and by notification was left at the village kiosk in Viti/Vitina. This, however, constitutes “reasonable efforts” to notify of the claim as required by section 10.1 of Law No. 03/L-079 only in exceptional cases. Such an exception cannot be found in this case. As the Supreme Court cannot exclude that the appellant was not aware of the claim, he has to be accepted as a party to the proceedings, his appeal is admissible. The court refers to numerous judgments on this issue, among these GSK-KPA-A-129/12.

Merits of the appeal

18. The Supreme Court initially notes that it is justifiable to issue a judgment at the present time, even though the order issued by the Supreme Court has not yet been served on V.P. The order was made on 21 November 2013, and it remains uncertain when the order can be served on her. The right for the parties to have a decision within reasonable time is a strong argument for not making additional attempts to serve the order on V.P.
19. Also, as will be reasoned below, the Supreme Court finds it necessary to annul the KPCC decision and send it back to the KPCC for reconsideration. This will allow both parties to make their comments to the KPCC and to the Supreme Court if the KPCC decision is appealed.
20. In the appeal H.L has stated that he has bought the property in 1989, but that the transaction was not registered because of discriminatory laws which were in force at the time. V.P has denied that any such sale took place, and has alleged that the contract submitted by H.L is a forgery.
21. The Supreme Court does not have sufficient evidence to decide on this factual dispute between the parties. An effort to clarify the facts of the case by a court order has not proven

- effective within reasonable time. It is therefore necessary for the Supreme Court to annul the decision of the KPCC, and to send the case back to the KPCC for reconsideration.
22. During the reconsideration, the KPCC will have to assess the validity of the submitted contract, and based on this assessment determine whether the claim is within the competence of the KPCC. If the case is within its competence, the KPCC must decide on the merits of the case.
23. On the basis of the above and in accordance with section 12.2 of Law 03/L-079 and art 198.1 of the Law on Contested Procedure the Court decided as in the enacting clause.

Legal Advice

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

Dag Brathole, EULEX Presiding Judge

Gyltene Sylejmani, Judge

Elka Filcheva - Ermenkova, EULEX Judge

Urs Nufet, EULEX Registrar