

**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-038/13

Prishtinë/Priština

26 March 2015

I. Z.

Podujevë/Podujevo

Appellants/Respondent

Vs.

B. J.

Serbia

Appellee/Claimant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Willem Brouwer and Esma Erterzi, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/140/2012 (case file registered at the KPA under the number KPA43292), dated 29 February 2012, after deliberation held on 26 March 2015, issues the following:

JUDGMENT

1. **The appeal filed by I. Z. against the KPCC Decision KPCC/D/A/140/2012, dated 29 February 2012, with regard to the case file registered at the KPA under the number KPA43292, is rejected.**
2. **The KPCC Decision KPCC/D/A/140/2012 dated 29 February 2012 with regard to the case file registered at the KPA under the number KPA43292 is confirmed.**

Procedural and factual background

1. On 14 November 2007, B. J. (hereinafter: the Claimant) filed a claim with the Kosovo Property Agency (hereinafter: KPA) where he requested the ownership over the parcel no. 85, identified in the Possession List no. ..., Cadastral Zone of Surkish, Municipality of Podujevë/Podujevo. The property is in a surface of 11 are 12 m² (hereinafter: the claimed property). The claim has been filed by the Claimant in the capacity of the property right holder.
The Claimant also seeks re-possession of the claimed property and compensation because it has been used without his authorization.
2. In his claim the Claimant did not specify whether the claimed property is occupied or not.
3. In support of his claim the Claimant submitted an uncertified Contract on Gift, dated 12 January 1987, concluded between the Claimant and his mother B. J., a drawing of the location of the claimed property and his identification document issued by the Republic of Serbia on 3 March 2003.
4. On 26 March 2008, the KPA made an incorrect notification of the claim by placing a notification on a wrong property. Later, on 30 July 2010, the claim was notified again but this time only through publication in the KPA's Notification Gazette no. 6 and in the UNHCR's Property Rights Office Bulletin. The publication was also left with the Village Leader, in the entrance of the village Surkish, the Cadastral Office of Podujevë/Podujevo, the Municipality of Podujevë/Podujevo, the Municipal Court of Podujevë/Podujevo and

with the Regional Office of Prishtinë/Priština. The same publication was also distributed to the UNHCR Center, the Kosovo Cadastral Agency, the Danish Red Cross (DRC) and to the UNMIK Office in Graçanicë/Gračanica.

5. From the case file and the verification report dated 5 May 2008, it is not clear whether the abovementioned Contract on Gift has been positively verified or not. Nevertheless, the KPA acting *ex officio* obtained the Possession List no. 59, issued by the United Nation Mission in Kosovo (UNMIK) on 5 May 2008, which establishes that the claimed property is registered in the name of the Claimant.
6. The Kosovo Property Claims Commission (hereinafter: the KPCC) in its decision KPCC/RES/15/2010 dated 19 February 2010, decided to cancel the KPCC Decision KPCC/D/A/19/2008 dated 20 June 2008, and returned the case to the KPA's Executive Secretariat for further proceeding based on the correct identification and proper notification of the claimed property, and hearing of a possible Respondent.
7. On 29 February 2012, the KPCC with its cover decision KPCC/D/A/140/2012 dated 29 February 2012, granted the claim of the Claimant as uncontested and recognized his ownership and possession rights over the disputed property. In paragraphs 11 and 12 of the reasoning of this cover decision, and which according to the certified individual decision refer specifically to this claim, it is stated that: “[...*Claims referred to in this decision are uncontested and no evidence was obtained ex officio by the Executive Secretariat which would challenge the assumption of the property right. Therefore, the Commission establishes the fact that the submitted documents establish the ownership right of Claimants over the claimed properties...*]”. Moreover, the same decision reads: “[...*Based on the conclusions by the Commission ... all these claims stand to be accepted*]”.
8. The Decision was served on the Claimant on 6 July 2012.
9. On 28 December 2012, I. Z. (hereinafter: the Appellant) challenged the KPCC Decision. The appeal was served on the Claimant (hereinafter: the Appellee) on 17 July 2013. The Appellee did not file a response on the appeal. The Supreme Court received the case on 14 March 2013.

Allegations of the parties

10. The Appellant alleges that he had bought the claimed property from the Appellee back in 1981 and that he has paid him the full agreed amount. As an evidence to establish this he provided the receipt of the alleged payment dated 30 November 1981. Furthermore, he adds that he has witnesses in case that is to be requested from him. Nonetheless, Appellant did not provide any purchase contract by which he would have established the alleged purchase. Whereas, the payment receipt by which the Appellant intends to establish the purchase of the property claimed by the Appellee does not contain the necessary identification and determinative elements which would have specified whether this receipt refers to the claimed property or to a different property. Additionally, the surface of the claimed property which is alleged to have been purchased by the Appellant in the purchase price payment receipt is different from the surface claimed and presented in his appeal – namely, the surface in the abovementioned receipt differs from the surface alleged in the appeal.

11. The Appellee alleges that he is the property right holder over the claimed property which was awarded to him by his mother B. J. To support this, the Appellee has also presented the Contract on Gift concluded between him and his mother, which, as mentioned earlier, contains no evidence that it has been certified. He also states that he has lost the property on 10 June 1999 as a result of the circumstances in 1998/1999.

Legal reasoning

12. The Appellant was not a party in the proceedings before the KPCC. According to Article 2.1, the KPCC Decision may be challenged by “a party” with the KPA. However, the Supreme Court has mentioned in many cases, *inter alia* in case GSK-KPA-A-1/13, that this circumstance may not go in the detriment of the Appellant with legal interest, who was not properly informed about the claim. Therefore, the Supreme Court has to decide if his appeal is admissible.

13. In this case, the notification of the claim was initially executed in a wrong property. For this reason, on 19 February 2010, the KPCC Decision dated 20 June 2008 was cancelled. The claim was then notified through the publication in the KPA's Notification Gazette no. 6 and in the BULLETIN of the UNHCR's Property Rights Office. The publication was also left with the Village Leader, at the entrance of Surkish village, in the Cadastral Office of Podujevë/Podujevo, the Municipality of Podujevë/Podujevo, the Municipal Court of Podujevë/Podujevo and in the Regional Office of Prishtinë/Priština. Then, it was distributed also to the UNHCR Center, the Kosovo Cadastral Agency, the DRC and to the UNMIK Office in Graçanicë/Gračanica.
14. The Supreme Court usually deems such notification through publication as insufficient because it does not present "reasonable efforts" for notifying a person who may have a legal interest in the claimed property pursuant to Article 10.1 of the Law no. 03/L-079.
15. The same as in case GSK-KPA-A-75/13, the Supreme Court considers that insufficient notification presents "serious misapplication" of Article 10.1 of the Law no. 03/L-07 pursuant to Article 12.1 of the same law.
16. The Supreme Court, in many cases when the claim was considered as uncontested and when the Appellant was not aware of it, deemed it necessary to cancel the KPCC Decision and return the case to retrial (Court refers to case GSK-KPA-A-064/13). These proceedings enables the Appellant to take part in the proceedings in the first instance and enables the losing party to challenge the decision taken after a full review of all relevant aspects of the case. Therefore, the Supreme Court accepts the Appellant as a party in the proceedings before the second instance.
17. The Supreme Court in this concrete case established that the Appellant when filing the appeal and presenting the receipt as an evidence for the payment of the purchase price to the Appellee, has recuperated his absence in the proceedings before the KPA/KPCC. However, the proving aspect through the presentation of this attestation is not sufficient, clear and convincing. This also because of the fact that the payment receipt by which the Appellant intends to establish the purchase of the property claimed by the Appellee, does not contain some of the necessary identification and determining elements (e.g. number of the parcel,

cadastral zone etc.) which would have clarified if it referred to the claimed property or to a different property. Additionally, the surface of the claimed property which is alleged to have been purchased by the Appellant as indicated in the purchase price payment receipt is different from the surface claimed and presented in his appeal – namely, the surface in the abovementioned receipt differs from the surface alleged in the appeal. Also the labelling of the property “kompirište” in the mentioned attestation is different from the labelling of the claimed property “Barica-Polonicë” in the Possession List no. 59 issued on 5 May 2008 by the Department of Cadaster, Geodesy and Property, Cadastral Zone of Surkish, Municipality of Podujevë/Podujevo, which was obtained ex officio by the KPA.

18. The Appellant did not provide any contract, which would have served as a legal basis for the transfer of the alleged ownership over the claimed property and as a possibility based on which the changes or registration in the cadastral record would have been made possible later on.
19. Finally, the appellate allegations together with the aforementioned receipt as an alleged evidence and lack of other evidence present no relevant evidence to establish that the Appellant constituted his eventual ownership right over the claimed property.
20. The appeal and the only evidence – the alleged receipt of the payment of the purchase price, as new circumstances and facts which would have eventually been reviewed and administered again compared to the situation and circumstances when the KPCC had taken the decision have not changed. Therefore, as such they do not need to be reviewed, reassessed or verified. Additionally, the Court considers that the principle of contradictoriness of parties has been observed and realized in its entirety.
21. Therefore, the Supreme Court pursuant to Article 195.1 (d) of the Law no. 03/L-006 on Contested Procedure, which is applied *mutatis mutandis* in compliance with Article 12.2 of the Law no. 03/L-079, rejects the appeal of the Appellant and confirms the decision of the KPCC.

Legal Advice

Pursuant to Section 13.6 of the UNMIK Regulation 2006/50 as amended by Law no. 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Willem Brouwer, EULEX Judge

Esma Erterzi, Judge

Urs Nufer, EULEX Registrar