

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-042/14

Pristina, 4 December 2014

In the proceedings of:

M. Sh.

Rahovec

Appellant

vs.

B. D.

Orahovac/Rahovec

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Willem Brouwer, Presiding Judge, Esma Erterzi and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/213/2013 (case files registered at the KPA under number KPA17624) dated 21 August 2013), after deliberation held on 4 December 2014, issues the following:

JUDGMENT:

1. **The appeal of M.Sh.is rejected as ungrounded.**
2. **The decision of the Kosovo Property Claims Commission KPCC/D/A/213/2013 (regarding case file registered at the KPA under number KPA17624) dated 21 August 2013, is confirmed.**

Procedural and factual background:

1. On 1 December 2006 B. D.(hereinafter: the appellee), filed a claim seeking confirmation of ownership right over a residential house built on the parcel no.1355/9, located on Street “Miladin Popovic” in Orahovac/Rahovec, Rahovec Cadastral Zone, Orahovac/Rahovec Municipality, Prizren region. He states that his property was illegally usurped and that the possession over the property was lost due to the armed conflict in 1998/99, indicating 12 June 199 as the date of loss.
2. To support his claim the appellee submitted the following evidence:
 - The Possession List no.2630 issued by Department of Geodesy in Municipality of Orehovac/Rahovec on 13 April 1984(hereinafter: the Possession List);
 - The decision no. 463-47, issued by the Council of Local Communities of Municipal Assembly Rahovec on 28 October 1983 on the approval of the request of M.G. to allocate him, for permanent use without alienation, the socially owned parcel no.1355/9 with a surface 4.81 ha (hereinafter: the decision no.463-47);
 - The copy of the plan issued by Municipal Geodesy Office, Municipality of Rahovec on 13 April 2004;
 - A contract on division of the household of M. D.(divisor) between his sons B, Z and N.D., concluded on 01.06.1986 and certified by the Municipal Court of Orahovac on 20.06.1986.
3. The claim was registered with the KPA under case no. KPA17624
4. During the proceedings the appellee submitted also the inheritance decision O.br.25/2008 dated 14 April 2008 issued by Municipal Court of Rahovec.

5. According to the Inheritance Decision, the Appellee and his brothers inherited the properties from their deceased father, including parcel no.1355/9, each of them an ideal part of 1/3 of the claimed properties.
6. The above mentioned documents were positively verified by Executive Secretariat with exception the decision no. 463-47, issued by the Council of Local Communities of Municipal Assembly Orahovac/Rahovec on 28 October 1983. This decision was not found in the archive of the Municipality of Orahovac/Rahovec.
7. The property was physically notified on 26 June 2010 based on GPS coordinates, orthophoto and the cadastral plan. The verification showed that the property is a residential damaged house and not occupied.
8. The claim was contested by M.Sh. (hereinafter: the appellant) who approached the KPA as a responding party, claiming a legal right over the claimed property. The appellant stated that this property belonged to his grandfather, but it was expropriated in 1954. On 3 August 2010 he signed the notice of participation.
9. With the Decision KPCC/D/R/213/2013, dated 21 August 2013, the Kosovo Property Claims Commission (KPCC) decided to grant the claim of B. D. According to the decision the claimant, B. D, is the owner of 1/3 of the claimed property and is entitled to the possession of the said property.
10. The decision was served on the appellant on 18 October 2013.
11. On 13 November 2013, the appellant submitted an appeal to the Supreme Court, challenging the KPCC decision.
12. With the appeal the appellant filed the following (copies of) documents as evidence:
 - The decision no.463-47, issued by the Council of Local Communities of Municipal assembly Rahovec on 28 October 1983;
 - The decision no.10-133/84 dated 2 October 1984 issued by Department for property and legal affairs of Municipal Assembly of Orahovac/Rahovec on ordering Mirko Djinovic(appellee's father) to urgently withdraw to the borders allocated on parcel no.1355/9 ;
 - The minutes kept during the meeting of the Department for property and legal affairs of the Municipal Assembly of Orahovac/Rahovec.

Allegations of the parties

The Appellant's allegations

13. M. Sh. claims that he has the right ownership over the parcel 1355/9 and for this reason he submitted a claim no.294/2011 before the Municipal Court of Rahovec. He states that the Municipality of Rahovec gave to the appellee's father the right for permanent use of the property, without alienation by the decision of no.463-47 and that the appellee's father abused this right, by occupying the socially owned property bordering the claimed parcel. The appellant further states and that the real owner of this property is the Municipality of Orahovac/Rahovec.

The appellee allegations

14. B. D. in response to the appeal of the appellant, states that the claimed property was under the ownership of his father according to the decision no.463-47 and Possession List no.2630. The appellee gained the co-ownership right pursuant to the Inheritance Decision which shows that the ownership right over the property is transferred from the appellee's father to him and his brothers. Regarding the allegations of the appellant that the appellee's father usurped parts of the other parcel, he clarifies that the KPCC's decision confirmed the ownership right over the claimed parcel, not over the other parcel. For these reasons he requests the Supreme Court to refuse the appeal of Mizair Shehu as ungrounded.

Legal reasoning

Admissibility of the appeal

15. The appeal is admissible. It has been filed within the period of 30 days prescribed in Section 12.1 of the Law No. 03/L-079.

Jurisdiction

16. The Supreme Court has jurisdiction to examine the appeal.

Merits

17. Following the review of the case files and allegations of the parties, the Supreme Court, did not find neither any fundamental error, nor serious misapplication of material and procedural law or erroneous and incomplete determination of facts.
18. The Possession List no.2630 shows that the appellee's father was recognized and registered as the legitimate owner of the claimed property. Furthermore, the transfer of the ownership right was done correctly pursuant to the positively verified Inheritance Decision. The Supreme Court concludes that the facts established and the evidences submitted by the appellee indicate that he is the lawful owner of the claimed property.
19. The allegation of the appellant that his grandfather owned the claimed property, which was expropriated in 1954, does not affect the decision of KPCC.
20. The Supreme Court of Kosovo finds that based on documentation provided by the appellant, allegations stipulated in the appeal and the evidence presented by him, results that the appealed decision was issued following a correct and complete determination of factual situation and correct application of substantive and procedural law. The appellant failed to present legally valid facts or valid evidence to prove that the decision of KPCC is ungrounded.
21. On the basis of the above and according to the provision of section 12.2 of the Law No. 03/L-079 and art. 195, paragraph d) of the Law on Contested Procedure, it has been decided as in the enacting clause of this judgment.

Legal Advice

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

Willem Brouwer, Presiding Judge

Esma Erterzi, EULEX Judge

Sylejman Nuredini, Judge

Urs Nufer, EULEX Registrar

