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- 018/14 **Prishtinë/Priština,**
2 December 2014

In the proceedings of:

V. V. / S. Đ.

Appellant

vs.

N/A

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/R/199/2013 (case file registered at the KPA under the number KPA 06077), dated 18 April 2013, after deliberation held on 2 December 2014, issues the following:

JUDGMENT

1. **The appeal of Appellant against the decision of the Kosovo Property Claims Commission KPCC/D/R/199/2013, dated 18 April 2013, is rejected as unfounded.**

2. **The decision of Kosovo Property Claims Commission KPCC/D/R/199/2013, dated 18 April 2013 as far as it is regarding the claim registered at the KPA under the number KPA06077, is confirmed.**

Procedural and factual background:

1. On 22 December 2006, V. V. filed a claim asking for confirmation of the ownership right over the parcel 951/1 with the total surface 00.04.68 ha, (henceforth the property) composed from the house and yard, located in the municipality of Peja/Peć, cadastral zone Vitomiricë/Vitomirica.

2. During the processing of the claim, she submitted, *inter alia*:

   - The Inheritance Ruling O.Br.72/23 issued by Municipal Court of Peja/Peć dated on 27 February 1974 indicating V. V. as the sole heir of property. She inherited the property from her deceased mother, M. V.

   - The Contract on long life care R.Br.515/95 dated on 21 November 1995 concluded between V. V. and her niece S. Đ. before Municipal Court of Prishtina/Priština, for transferring the ownership of the claimed property after her death to her niece.

   - The Possession List No. 231, issued by the Serbian Geodesic Institute, Centre for Cadastre of Immovable Property Peja/Peć on 25 July 2005. According to the possession list the property was owned by V. V.

   - The Power of Attorney dated 20 May 2008 showing that V.V. had authorized her niece S. Đ. to represent her before the KPA.

   - The Death Certificate showing that V. V. passed away on 16 May 2009.

3. The notification of the claim carried out on 27 January 2011 and reflects the property as a yard (the house was totally destroyed) which was not occupied.

4. From the evidences on the case it is noted that for the same property there was another claim filed before the KPA by S. V. (Claimant's nephew), seeking repossession of the property alleging

that he is the lawful co-owner of 1/3 ideal part of the property. S. V. alleged that he is legal heir of the property.

5. In support of his claim S. V. submitted the final Judgement P.Br.716/98 of 09 February 1999 issued by Municipal Court of Peja/Peć (hereafter to be referred to as: 1999 Judgment) recognizing the co ownership right over the property to him as well his brothers each with 1/3 ideal part and the Possession List no 231 issued by United Nations Interim Administration Mission in Kosovo, Department for Cadastre Geodesy and Property, Municipality of Peja/Peć cadastral zone Vitomirica showing the property listed in the name of three co-owners among them S. V..

6. From the above it is clear that the members of the family V. (S. Đ. and S. V.) were parties before the KPA as well court proceedings before Municipal Court of Peja both pretending being legal heirs over the claimed property.

7. According to the KPA verification report, of 04 February 2013, the property was found registered on the name of three co-owners B, M. and S. V., the Appellant's brothers. The Certificate for Immovable Property Rights was updated in 2003 according to the Judgement C.Br.716/98 which was already presented in the claim.

8. The Executive Secretariat of the KPA contacted the Appellant in 26 March 2013 to inform her that the property was registered under the name of her brothers in the capacity of co-owners. The Appellant stated that the current property contest is only related to her three brothers whom she alleges having falsified the 1999 Judgement and related evidence in order to register the property in their names.

9. The Appellant additionally presented :

   - Criminal Charges of 31 August 2012 against three co-owners before the Municipal Prosecution of Peja charging them for fraud in terms of Section 335 of the Criminal Code of Kosovo.

   - Request before Municipal Court of Peja dated on 12/10/2012 in regards of applying the temporary measures, hereunder suspension of the co-owner's right to dispose of the property.

10. The Executive Secretariat of the KPA contacted also S. V. who maintains that he and his brothers have been in possession of the property until the conflict and also during the period when the property was registered in the name of the Claimant, V. V. S.V. explained that the Claimant together with his father had an agreement about pronouncing the Claimant as sole owner of the property only as formality. As the Claimant refused to transfer the property right as previously agreed between her and S.V. father, the latter initiated a civil lawsuit against Claimant which was finalized by Judgement in favour of him and his brothers.

11. KPCC through the decision KPCC/D/R/199/2013 decided on 18 April 2013 that the claim is to be dismissed as being outside the jurisdiction of the KPCC on the ground that the Claimant has failed to show that her claim involves circumstances directly related to or resulting from the1998-1998 conflict.

12. The Decision of the KPCC was served to the Appellant on 19 August 2013. She filed an appeal on 11 September 2013.

Allegations of the Appellant

13. The Appellant states the decision made by KPCC is based on violation of the substantive and procedural law, also, erroneous and incomplete determination of the factual situation

14. The Appellant alleges that the late V. V. claim was dismissed as specified in the first article of the decision KPCC/D/R/199/2013, whereas the second article of the decision states that the property was illegally occupied, and that the above decision provides no entitlement to the respondents or current possessor.

15. Appellant points out that, she has never been contacted by an official of KPA, in order to clarify the situation, and she submitted all necessary evidence confirming her ownership right over the property.

16. Appellant believes that the KPA, without evidence, arbitrary and completely subjectively, rejects all claims by Serbs; inter alia claim submitted by V.V., in order to have their heirs, left without property she enjoyed all until June 1999.

17. The KPCC decision, not supported by any evidence and made in a way as described, represents severe violation of national and international law which is directly applicable according to a Kosovo Constitution , because claimant has , through documentation attached to the claim , proven that she is the only and exclusive owner of the property.

Legal reasoning:

Admissibility of the appeal

18. The appeal was filed within 30 days as foreseen by Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079-(hereinafter UNMIK regulation 2006/50). The Supreme Court has jurisdiction over the appeal against the decision of the KPCC. The appeal is admissible.

Merits of the appeal

19. The issue to consider in this case is whether the KPCC had jurisdiction to examine the claim of the Claimant filed with the KPA in 2006.

20. Regarding the allegation of the Appellant that the KPCC decision is unclear, the KPCC has given a certified decision dated on 18 April 2013, the decision made a reference to "relevant paragraphs" in the Cover Decision. A special reference is made to the paragraphs 9 and 23.The Supreme Court will therefore give a short summary of the reasons why the KPCC does not have the jurisdiction in the case.

21. According to Section 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, the claimant is entitled a Commission order on repossession of property if the claimant not only proves the ownership over that property but also that he or she is not able to exercise the rights over such property due to circumstances directly related or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.

22. The KPCC dismissed the claim on the bases it did not have jurisdiction to decide on the merits of the claim since the Claimant failed to show that her claim involves circumstances directly related to or resulting from the 1998-1999 conflict.

23. In this regard, first of all, the Supreme Court established that the Claimant was never in possession of the property prior to the armed conflict. The evidence submitted by her (Power of Attorney, Death Certificate) refers to Prishtina as the residence of Claimant. The Appellant explicitly has confirmed on Criminal Charges that she and Claimant have lived in Prishtina until June 1999.

24. Moreover, S. V., the Appellant's brother filed the claim regarding same property seeking for repossession. The Appellant was informed of the claim by KPA and she confirmed that the current property contest only related to her brothers, It is obvious from the documents and statements within the file of KPA that the family dispute regarding the ownership right for the property in question has started long before the outbreak of the armed conflict of 1998/1999.

25. The Appellant alleges that her brother forged the 1999 Municipal Court Judgement and related evidences in order to register the property in their names, she however did not submit any legal evidence in support of her allegation, the dispute was neither caused nor influenced by the war. It derives directly from an ownership dispute between the members of the V. family. Therefore, the claim is outside of the jurisdiction of the KPA and the KPCC. The conclusion of the KPCC which dismissed the claim due to lack of jurisdiction was correct.

26. This is because the verified facts and administrated evidences showed that the Claimant neither left the claimed property nor lost possession of it because of the conflict or as a result of the circumstances which are directly related or as a result of the armed conflict occurred in Kosovo between 1998/1999.

27. Consequently the appeal according to Section 13.3 (c) of UNMIK-Regulation 2006/50 as amended by Law No. 03/L-079 had to be rejected as unfounded and the decision of the KPCC confirmed as far as it is related to the case which had to be decided upon in this judgment (KPA 06077).

Legal Advice

28. Pursuant to Section 13.6 of 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, EULEX Judge

Urs Nufer, EULEX Registrar