

SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA

KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË AGJENICISË KOSOVARE TË PRONËS-AKP-së
ŽALBENO VEĆE KOSOVSKE AGENCIJA ZA IMOVINU-KAI

GSK-KPA-A-050/15

Prishtina,

30 November 2016

In the proceedings of:

B. P. son and legal successor of
M. P.

Appellant

vs

A.K.

Represented by B. L., lawyer

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Beshir Islami and Krassimir Mazgalov, Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/A/228/2014 (case files registered in KPA under KPA93331, KPA93336, KPA93337 and KPA93355), dated 13 March 2014, after deliberation held on 30 November 2016, issues this:

JUDGMENT

1. Appeals of B. P, registered with case numbers GSK-KPA-A-050/2015, GSK-KPA-A-055/2015, GSK-KPA-A-056/2015 and GSK-KPA-A-62/2015, are joined in a single case under GSK-KPA-A-050/2015.
2. Appeals of B. P, filed against the Decision KPCC/D/A/228/2014 (case file registered in KPA under KPA93331, KPA93336, KPA93337 and KPA93355) dated 13 March 2014, are rejected as ungrounded.
3. The Decision of the Kosovo Property Claims Commission KPCC/D/A/228/2014, dated 13 March 2014, concerning s the claims registered in KPA (no.KPA93331, KPA93336, KPA93337 and KPA93355), is confirmed.

Procedural and factual background:

1. On 23 March 2007, M. P. (hereinafter: the Claimant) initially filed a claim alleging that he is the owner of parcel 90/1 and 91/1 at the place called “Piskota” with a total surface of 07.27.14 ha. The Claimant further alleges that he authorised A. K. to divide the parcels and sell them by seeking confirmation of the property right and repossession of the cadastral parcels that after the division of the property are as below:
Parcel no. 91/19 to 91/33 at the place called “Jahovac”, with a surface of 01.45.37 ha with the claim no.KPA93331; parcel no.91/52 at the place called “Jahovac” with a surface of 0.26.60 ha with the claim no.KPA93336; parcel no.91/54 at the place called “Jahovac”, with a surface of 00.27.18 ha with the claim no.KPA93337; and parcel no.91/46 at the place called “Piskote”, with a surface of 00.10.00 ha with the claim no.KPA93355.
2. The Claimant declared that he initially lost the possession over the claimed properties because of the armed conflict, indicating 15 June 1999 as the date of loss of possession, but later he had authorised A. K. (hereinafter: the Respondent) to divide the claimed properties and to create new cadastral parcels in order to sell them. The Respondent misused the authorisation given to him and manipulated with the claimed properties by not compensating him for the claimed properties.
3. Together with the claim, the Claimant submitted in the KPA the following:

- A copy of the Possession List no.1013 issued by the Geodesy Authority of Republic of Serbia, Cadastral Service of Gjakova Municipality, in which the claimed properties were listed in the Claimant's name. This Possession List does not contain an issue date.
 - A written Statement of the Claimant dated 23 March 2007 in which he stated that the Respondent, in the capacity of owner of the real estate agency "Kontakti" from Peja, through Mrs. M. M., owner of real estate agency "Horizont" from Kragujevac, contacted and offered him his services for mediation and sale of the claimed properties. According to the statement, the Claimant agreed with the Respondent to sell the claimed properties at 1000 Euros per ar. The Respondent carried out the first sale on behalf of the claimant on 28 December 2004. Later, the Claimant withdrew the authorisation given to the Respondent, but the Respondent misused the withdrawn authorisation and sold a part of the properties. In addition to selling the properties without the Claimant's approval, the Respondent occupied the remaining part of properties and the Claimant currently has no knowledge as to what the respondent did with the properties.
 - A Death Certificate nor. 203-790/2014 issued by the Civil Registration Office in Arangjelovac on 23 May 2014 in which it is indicated that M. P. died on 13 May 2014. The Death Certificate was submitted by B. P., son of M. P.
4. From the findings of the KPA Executive Secretariat (Verification reports dated 2013 and 06 February 2014) it was ascertained that the claimed properties (cadastral parcel 91/1) were divided into new cadastral parcels and that new claims were created. The new claims and cadastral parcels claimed by the claimant are registered as below:

Number of appeal and claim in KPA	Information regarding the claimed properties
GSK-KPA-A-050/15 (Claim no. KPA93331)	Parcel no. 91/19 to 91/33 at the place called "Jahovac", with a surface area of 01.45.37 ha
GSK-KPA-A-055/15 (Claim no. KPA93336)	Parcel no. 91/52 at the place called "Jahovac, with a surface area of 0.26.60 ha.
GSK-KPA-A-056/15 (Claim no. KPA93337)	Parcel no. 91/54 at the place called "Jahovac", with a surface area of 00.27.18 ha

5. GSK-KPA-A-062/15 (Claim no. KPA93355)	Parcel no. 91/46 at the place called “Piskote”, with a surface area of 00.10.00 ha
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6. The notification of claimed properties was done on 06 February 2014 and these properties were found to be occupied by the Respondent who was not present during the notification process.
7. The Verification Report dated 6 February 2014 indicates that the division of cadastral parcels was done based on the Cadastral Decision no. 952-02-347/04 dated 11 October 2004, which was issued upon request of the authorised person. Concerning the claimed properties, the officials from the Cadastre Department of Gjakova Municipality have confirmed that properties have sustained many changes. The changes relate to the numbers and surface areas of parcels because new cadastral parcels as well as new owners were created, since the properties had been sold.
8. The legal basis for issuing this Ruling was also the sale and purchase contract for the immovable property certified in the Municipal Court in Gjakova Vr.nr.2390/95 dated 09.09.2005.
9. The said documents were positively verified with the KPA verification report dated 02 February 2014 and 10 February 2014.
10. By the Decision KPCC/D/A/ 228/2014 dated 13 March 2014, the Kosovo Property Claims Commission (hereinafter: KPCC) dismissed the claims due to lack of jurisdiction. In the reasoning of the appeal Decision (paragraphs 42 and 43) it is ascertained that the claimant, based on his assertion, did not lose possession over the claimed properties as a result of the conflict in the period 1998-1999 1998-1999, but as a result of voluntary sale after the conflict. Consequently, such claims fall outside the jurisdiction of the Commission.
11. The Claimant died on 13 May 2014; the KPCC Decision was issued later. The Decision was served on the Claimant’s son, B. P., on 25 August 2014. On 22 September 2014, B. P.(hereinafter: the Appellant) filed the appeals against the KPCC Decision. The appeals were served on A. K. (hereinafter: the Appellee) on 12 February 2014. He responded to the appeal on 6 March 2015.

Allegations of the parties

The Appellant

12. The Appellant alleges that the KPCC Decision contains fundamental breaches of procedural provisions as well as wrongful and incomplete determination of facts, with the proposal for the appeal Decision to be annulled by returning his properties to his possession.
13. The Appellant states that the claimed properties belonged to his father (M. P.) and now belong to him as his inheritor. The reasoning of KPCC Decision where it is said that his deceased father voluntarily alienated the claimed properties to the third party does not stand, because the alienation occurred unlawfully for which civil and criminal proceedings were initiated and which are ongoing.
14. In the end, the Appellant requests from the KPA Appeals Panel of the Supreme Court not to allow further alienation of claimed properties until the conclusion of civil and criminal proceedings; that is, not to dismiss the claims.

The Appellee

15. The Appellee's response refers to the KPCC Decision no KPCC/D/A/227/2014 dated on 13 March 2014 (the Appellee was in the capacity of the Appellant while appealing the Decision KPCC/D/A/227/2014 dated on 13 March 2014).
16. The Appellee denied the Appellant's allegations stating that the Appellant sold the claimed properties through him as mediator according to the authorisation given by the claimant. All the claimed properties that are subject of the claim with valid and legal transaction have moved to third parties.
17. The Appellee confirmed that regarding the same matter the Appellant initiated civil proceedings concerning the compensation of the value of immovable property. The proceedings are ongoing before the Basic Court in Peja. Further, the Appellee provided detailed explanations concerning the stages of the court proceedings. He requests from the Supreme Court to reject the Appellant's appeals as ungrounded. According to the Appellee, the Supreme Court has to be declared as having no jurisdiction because of litispentence since there already is a civil case C. Nr. 196/12 ongoing before the Basic Court in Peja with the claimed properties and parties that are subject of those proceedings.
18. To support his response, the Appellee submitted the following documents:
 - An Authorisation no. 463/2004, certified in the Municipal Court in Kragujevac on 9 October 2004 through which the Appellant authorised the real estate agency "Kontakt" from Peja, respectively its owner A.K., to undertake all actions for measurement and

physical division of claimed parcels 90/1 and 91/1 with a total surface of 07.27.14 ha, registered in the possession list no. 1013 in the cadastral zone Jahoc, Municipality of Gjakova.

- An Authorisation certified in the Mitrovica Municipal Court vr.nr.3206/2005 dated 08 September 2005, through which the Appellee and his agency “Kontakt” was authorised to sell, register in the name of third persons and to accept the sale and purchase price on his behalf.
- A confirmation letter from the Gjakova Municipal Assembly dated 22 April 2005 giving the approval for division of properties.
- A Decision no. 952-02-347/04 issued by the Cadastre Directorate of Gjakova Municipality, dated 25 April 2005, on approval of the Appellant’s request for physical division of parcels 90/1 and 91/1 and for creation of new parcels. The request contains claimed properties as described in the table under paragraph 4 of this judgment.
- A Lawsuit filed in the Municipal Court in Gjakova on 18 December 2006. The lawsuit was filed by the Appellant against the Appellee for debt payment in the amount of 155.00.00 Euros.
- Other various documents (authorisations, court minutes) that are not relevant for the court.

Legal reasoning

Admissibility of the appeal

19. The Appeals are admissible because they were filed within the 30 day period, as foreseen by Section 12.1 of the UNMIK Regulation 2006/50, as amended by the Law no. 03/L-079 on the Resolution of Claims relating to Private Immovable Property, including Agricultural and Commercial Property as amended by the Law no. 03/L-079, hereinafter the Law.

Joining of the appeals

20. Pursuant to Section 13.4 of UNMIK Regulation 2006/50 as amended by the Law no. 03/L-079, the Supreme Court may decide on joined or consolidated appeals where such joinder or consolidation has been decided upon by the Commission in accordance with section 11.3 (a) of the law. This section allows the Commission to consider joining or consolidating these claims to review and render an aggregate Decision on them when there are common legal grounds and evidentiary issues.
21. The provisions of the Law on civil procedure that are applicable before the Appeals Panel of the Supreme Court in accordance with Section 12.2 of UNMIK Regulation 2006/50, as amended by the Law no. 03/L-079, as well as provision of Article 408.1 in conjunction with Article 193 of the Law no. 03/L006 on contested procedure, foresee the possibility of joining all claims by a ruling if it ensures the efficiency and cost-effectiveness of proceedings and reducing court expenses in the concrete legal matters.
22. In the text of appeals filed by the Appellant, the Supreme Court observes that, except for different case number for which the respective appeal was filed, the factual and legal basis, factual and legal identity are completely identical in these four cases. Only the parcels, object of the property right which is alleged in each claim, are different. The appeals are based on the same explanatory statements and on the same documentation. Consequently, the legal reasoning of KPCC for such claims is the same.
23. The appeals registered under the numbers GSK-KPA-A-050/15, GSK-KPA-A-055/15, GSK-KPA-A-056/15 and GSK-KPA-A-062/2015, are joined in a single case under GSK-KPA-A-050/15.

Jurisdiction

24. Pursuant to Article 3.1 of the Law no. 03/L-079, the KPCC has the competence to resolve conflict-related claims, including circumstances directly related or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999. Therefore, the claimant must not only prove his property right over the private immovable property, but also that he or she is now not able to exercise such property rights by reason of circumstances directly related to or resulting from the armed conflict.
25. KPCC decided that this matter falls outside its jurisdiction because the loss of possession is not related to the armed conflict, but as a result of voluntary sale of claimed properties after the conflict.

26. The Supreme Court accepts as right and lawful the KPCC's legal stance when it found that the property right and possession over the claimed properties were not lost because of the armed conflict in Kosovo in the period 1998-1999, but as a result of voluntary alienation based on legal transactions of the claimant which he himself accepts. This ascertainment is based on confirmation of cadastre officials that the cadastral records were updated in the names of new owners. In addition, the Appellant's father, through his written statement dated 23 March 2007, confirms that the Appellee contacted and offered him his services for mediation and sale of the claimed properties. The Appellant agreed with the Appellee to sell the claimed properties at the price of 1000 euro per ar. Based on the written statement, the first sale on behalf of the Appellant by the Appellee was done on 28 December 2004. This incontestable fact by the parties confirms that the Appellant voluntarily sold the claimed properties.
27. The Appellant also indirectly confirmed the sale by alleging that the alienation of claimed properties occurred unlawfully. For this reason, he initiated a civil proceeding for compensation of the value of the immovable property.
28. The Supreme Court considers that based on such situation of the case, the loss of possession over the claimed properties does not derive from the armed conflict that occurred in the period 1998-1999. The Appellant's allegation concerning the validity of alienation of the claimed properties cannot be examined in these proceedings of the KPA Appeals Panel of the Supreme Court because of the lack of jurisdiction.
29. The challenged KPCC Decision was rendered upon complete and just determination of the factual situation as well as proper application of the procedural and material law. The appeal Decision does not contain essential violations of procedural provisions of absolute nature pursuant to Article 194 of LCP, which this court examines ex officio, nor of those that have influence on its rightfulness, legality and regularity..
30. Therefore, the Supreme Court ascertains that by dismissing the claim as falling outside its jurisdiction, the KPCC rendered a just Decision. Consequently, the appeal has to be rejected as ungrounded.
31. Based on the above and pursuant to Article 13.3 (c) of the Law 03/L-079, it has been decided as in the enacting clause of this Judgment.

32. This Judgment does not prejudice the Appellant's right to pursue his alleged right before the competent court, if he deems it necessary.

Legal advice

33. 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.

Sylejman Nuredini, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Beshir Islami, Judge

Sandra Gudaityte, EULEX Registrar