SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA

KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË AKP-ës
ŽALBENO VEĆE KAI

GSK-KPA-A-132/13

Prishtinë/Priština, 8 July 2015

In the proceedings of

R I
P e P /D P
P /P

Appellant

vs.

B J
Z bb
34.. A , S

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Willem Brouwer and Rolandus Bruin, Judges, on the appeal against the decision of the Kosovo Property Claims Commission (henceforth: KPCC) KPCC/D/A/140/2012, dated 29 February 2012, (case file registered at the KPA under the number KPA43295), henceforth also: KPCC Decision, after deliberation held on 8 July 2015, issues the following

JUDGMENT:

1. **The appeal of R I against the Decision of the KPCC no. KPCC/D/A/140, dated 29 February 2012 is accepted as grounded.**

2. **The decision of KPCC no. KPCC/D/A/140/2012, dated 29 February 2012, as far as it concerns claim number KPA43295, is annulled.**

3. **The claim no. KPA43295 of B J is dismissed whereas the claim is not within the scope of jurisdiction of the Kosovo Property Agency.**

Procedural and Factual background

1. On 14 November 2007 B J , henceforth: Appellee, filed a claim with the Kosovo Property Agency (KPA), seeking confirmation of his property right on parcel nr. 124, orchard third class, 7 are surface, at Surkis/Surkiš, Podujevë/Podujevo , Fshati/Barica (hereafter: the claimed property). He claims repossession of that property and also claims compensation for caused damage.

2. The KPA added ex officio in April 2008 to the file possession list no. 59, dated 16 April 2008. According to this possession list, that was updated January 1987, J B (M) is 1/1 private property right holder of parcel 124, in Cadastral Zone Surkish, in Fshati-Barica, Municipality Pudojevë/Pudojevo, with a surface of 7 are.

3. On 20 June 2008 the Kosovo Property Claims Commission (KPCC) in Cover Decision KPCC/D/A/19/2008 awarded the claim after a procedure, in which the claim was not contested.

4. KPCC rescinded that decision by Resolution no. KPCC/RES/15/2010, dated 19 February 2010, because the claim was not properly processed in that the claimed property had not been physically identified and properly notified.

5. According to a Claim Processing Report from the KPA dated 30 November 2011 (*p. 071 of the file*) a re-notification of the claim was made on 30 July 2010. According to a Notification and Confirmation Report, dated 30 July 2010, (*p. 015 of the file*) the claim was notified through publication in the Gazette of KPA.

6. No other party participated in the proceedings before KPCC.

7. In the KPCC Decision, dated 29 February 2012, the KPCC awarded the claim for ownership and also stated that Appellee was entitled to possession of the property. The KPCC dismissed the claim for compensation. For the reasoning on this claim KPCC refers in the certified decision to paragraph 12 in the Cover decision.

8. The decision was served on Appellee on 6 July 2012.

9. On 6 June 2013 Appellant filed an appeal to the KPA Appeals Panel of the Supreme Court. The appeal was served on Appellee on 9 October 21013.

10. Appellant submitted with his appeal *inter alia*:
    - two handwritten receipts on payments of 360,000 and 140,000 Dinar, dated 31 March and 30 April 1985,
    - a statement done before a notary, dated 20 June 2013; in this statement Appellant declares as follows. He purchased in 1979 land and house from M J R next to the claimed property. From 1979 till 1985 he was neighbor of Appellee. On 31 March 1985 they agreed on buying the claimed property. They agreed on payment in two installments, the latest on 30 April 1985. He paid in the presence of two witnesses that support this notary statement. The contract was not registered due to the prohibition of sale of property between Albanians and Serbs in that time.

11. Appellee did not reply to the appeal.

12. The Supreme Court sent a Court order to both parties. The Supreme Court ordered the parties to answer the following questions:

To both parties:

1. *To give a detailed description, if possible supported with evidence, of:*
   a. who possessed the claimed property during the armed conflict between 27 February 1998 and 20 June 1999,
   b. what use was made of the claimed property in this period and
   c. how the possession was lost.

   To Appellant:

2. *To state the reason, if possible supported with evidence, why Appellant did not participate in the procedure of the case in first instance before the KPCC.*

3. *To state, and if possible document, when and how Appellant received information about the KPCC decision.*

   To Appellee:

4. *To react on the allegations of Appellant and the evidence sent to the Supreme Court by Appellant:*
   - that he bought from Appellee the parcel next to the claimed property in 1979 and became neighbor of Appellee;
   - that he bought in 1985 from Appellee the claimed property;
   - that the price had to be paid in one month's time;
   - that the payment was made on 31 March 1985 and 30 April 1985 and that N S , N M and I U were present and are prepared to testify;
   Appellee submits two hand-written receipts, one for payment of 140 000 dinars as payment for land called 'bašta in Surkiš" and one for payment of 360 000 dinars for land called 'mesto šljivan', dated 31 March and 30 April 1985.

13. The Appellant answered to the Court order with a statement, dated 2 February 2015. He declares as follows. After the purchase of the claimed property from Appellee on 30 April 1985, he built a house on the claimed property in 1991. He resides there since 1991. As proof he sends proof of possession of an electricity meter since then. He also submitted tax decisions and receipts of tax paymants as of the early nineties. He abandoned the house for only three weeks because the Serbian police evacuated some villages. Afterwards he has used the claimed property. He further states that he did not participate in the proceedings before KPCC because he was not summoned. On 4 July 2013 two officials came to Surkish. They informed him about the claim of Appellee. That was the first time he was informed about the claim.

14. Appellee answered to the Court order by letter dated 18 February 2015. Het states as follows. He concluded a purchase contract with Appellant on the claimed property in 1985. Appellant had to pay 700,000 dinars. Appellant paid in instalments and signed for receipts. Appellant did not pay the total amount. He still owes 200,000 dinars. Despite his call to Appellant to pay the agreed price so the contract could be concluded and certified, Appellant refused to do so. Therefor the claimed property was not transferred. All tax obligations fall on him and it is very well known that the claimed property is occupied without any compensation. Appellee issued the receipts about the purchase price that were submitted by Appellant. The witnesses mentioned by Appellant were not present at the agreement or payment, so there statements are false. If Appellant agrees on payment of the remaining debt, to be fixed on 1000 Euro, and pays all the cost for transfer of the property right, Appellee is willing to transfer the claimed property.

The allegations of the parties

15. Before the KPCC Appellee stated that he had been given the claimed property by his mother. As the basis for his claim he submitted a document with the title: "Deed of Gift", dated 12 January 1987. According to this document he was given this property, among others, by his mother and he was entitled to be registered as property right holder.

16. Appellant alleges in appeal that he bought the property from Appellee. The price had to be paid in one month's time. The payment was made on 31 March 1985 and 30 April 1985. Appellant states that the witnesses N S , N M and I U were present and are prepared to testify. He submits declarations on his allegations by himself and by N S and N M made on 20 June 2013 before a notary. According to this declaration Appellant bought the parcel next to the claimed property in 1979 and became neighbor of Appellee. In 1985 according to this declaration Appellant bought the claimed property. He also states that from 1985 till the end of the war the sale of property between Albanians and Serbs was forbidden and he could not have his ownership registered because of discriminatory laws. Appellee further submits two hand-written receipts, one for payment of 140 000 dinars as payment for land called 'bašta in Surkiš' and one for payment of 360 000 dinars for land called 'mesto šljivan', dated 31 March and 30 April 1985, and some other documents.

Legal reasoning

Admissibility of the appeal

17. According to Section 10.2 of UNMIK Regulation 2006/50 on the resolution of claims relating to private immovable property, including agricultural and commercial property as amended by Law 03/L-079 (hereafter: Law UNMIK 2006/50) any person who is purporting to have rights to the (claimed) property shall be a party in proceedings before KPCC. According to Section 12.1 of that Law a decision by the KPCC can be appealed (only) by a party before the KPCC. However, the appeal is still admissible if the appellant had not taken part in the proceedings before KPA, if appellant is an interested party who was not properly notified of the claim (see judgement GSK-KPA-A-095/12) or otherwise was not aware or reasonably could not be aware of the claim before he filed the appeal.

18. Appellant was not a party in the proceedings before the KPCC.

19. In the present case Appellant claims to have a property right to the claimed property. Therefore he is an interested party, but he was not notified of the claim by KPA. The file also does not contain any evidence that substantiates that Appellant was aware or could be aware of the claim just before he filed the appeal. According to established case law of this Court publication of notification of the claim in the Gazette of KPA is normally not enough to decide otherwise. Therefore the the appeal is admissible.

Merits of the appeal

20. Between the parties is not in dispute that Appellee was owner of the claimed property and that the ownership is registered in cadastral lists (the possession list) in the name of Appellee.

21. The allegations of the Appellant do however lead to the question whether the loss of the possession of the claimed property is related to the conflict, because according to Section

3.1 of Law UNMIK 2006/50, the KPCC has jurisdiction only on claims when the loss of possession of an immovable property is related to the armed conflict in 1998/1999.

22. The Supreme Court concludes, that the answer to this question is no. Between the parties is not disputed that they reached and (oral) agreement on the purchase of the claimed property in 1985 and that Appellant did some payments to Appellee. Appellant further stated in detail how he used the claimed property before and during the armed conflict. Appellee did not give any statement on possession or use by someone else than Appellant during the armed conflict. Under these circumstances it is established that the alleged loss of possession of the claimed property by Appellee is not related to the conflict. Therefore the KPCC did not have jurisdiction to decide on the claim and the KPCC decision cannot stand and has to be annulled. The claim has to be dismissed as KPCC has no jurisdiction.

23. There for the Supreme Court decides as in the enacting clause, based on article 3.1 Law UNMIK 2006/50.

Legal Advice

Pursuant to Section 13.6 of Law UNMIK 2006/50 this judgment is final and cannot be challenged through ordinary or extraordinary remedies

Sylejman Nuredini, Presiding Judge

Willem Brouwer, EULEX Judge

Rolandus Bruin, EULEX Judge

Urs Nufer, EULEX Registrar