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-136/14 **Prishtinë/Priština,**
7 December 2016

In the proceedings of:

M.K.
Street "Milice Urošević"
Kragujevac
Republic of Serbia

Appellant

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Sylejman Nuredini, Presiding Judge, Anna Bednarek and Beshir Islami, Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/A/212/2013 dated 21 August 2013 (the case file registered at the Kosovo Property Agency under the number KPA39982) after the deliberation held on 7 December 2016, issues the following:

JUDGMENT

1. **The Appeal of M.K. against the Decision of the Kosovo Property Claims Commission KPCC/D/A/212/2013 dated 21 August 2013; with regard to the Claim registered under the number KPA39982 is rejected as unfounded.**

2. **The Decision of the Kosovo Property Claims Commission KPCC/D/A/212/2013 dated 21 August 2013 with regard to the Claim registered with the number KPA39982 is confirmed.**

Procedural and factual background:

1. On 6 June 2007, M.K. (henceforth "the Appellant") filed a Claim at the Kosovo Property Agency (henceforth "the KPA") seeking the repossession right over a cadastral parcel with the number 619/2, cultivated land and the surface of 02.04.88 ha, which is located at the place called "Vakuvski zabran", village "Gërmovë/Grmovo", at the Municipality of Vitia/Vitina (henceforth "the claimed property"). He stated that the loss of possession took place on 17 June 1999. Besides the repossession, the Appellant seeks the compensation for the use of the property without his consent.
2. To support the Claim, the Appellant provided the KPA with the following documents:
   - The copy of the Judgment issued by the Municipal Court of Vitia/Vitina in the case No 246/94 on 9 November 1994, on the basis of which it was established that the land with the surface 2.04.88 ha was confiscated during the period between 1945-1952 from R.K. (the Appellant's father) and the Enterprise "AgroMorava" from Vitia/Vitina was obliged to recognize the Appellant as the Property Right Holder of the cadastral parcel No 619/2, a 6th class cultivated land with the surface 2.04.88 ha, located at the place called "Vakuvski zabran", Gërmovë/Grmovo, Municipality of Vitia/Vitina. The Judgment became final on 20 December 1994.
   - The copy of the extract from the Possession List No 2/94 issued by the Geodetic Administration of the Municipality of Vitia/Vitina on 30 March 1995, listing the Appellant as the owner of the claimed property.
   - The copy of the Death Certificate No 03-203-16-V issued by the Civil Registration Office of the Vitia/Vitina Municipality on 14 July 2008 showing R.K. (the Appellant's father) passed away on 11 September 1984.
   - The copy of the Inheritance Decision issued by the Municipal Court in Vitia/Vitina in the case O.br. 39/94 on 21 September 1994, on the basis of which the Appellant was declared to be the sole heir after his late father R.K. . The Decision does not include the claimed property.
3. On 11 February 2008, the KPA's Notification Team went to the place where the claimed property allegedly was located and put up a sign indicating that the property was subject to a claim and that interested parties should have filed their responses within 30 days. The property was found to be not occupied (uncultivated land). As the initial verification of the property deemed to be incorrect, the notification was repeated again on 17 June 2010 by publishing the notification about the Claim in the KPA's Notification Gazette No 2 of June 2010 and the UNHCR's Property Office Bulletin. The Gazette and the list were left with the Municipality of Vitia/Vitina which accepted to make it available for the interested parties. The same Publications were left at the entrance and exit of the village Gërmovë/Grmovo, the Cadastral Office of the Municipality of Vitia/Vitina and the Municipal Court of Vitia/Vitina. Last notification of the Claim was performed physically on 8 May 2013 and the claimed property was found occupied by unknown person (cultivated land and grassland).

4. The KPA's Verification Report of 2009 stated that the Judgment rendered in the case No 246/94 on 9 November 1994 by the Municipal Court of Vitia/Vitina was positively verified, while the Certificate for the Immovable Property Rights was negatively verified by the Department for Cadastre of the Municipality of Vitia/Vitina. According to the Verification Report of 1 April 2011 the Cadastral Parcel No 619 was found to be not divided and registered under the name of S.S. on the basis of the Contract on Sale No 1450/09, which was concluded between S.S. and Kosovo Trust Agency on 24 July 2009.
5. On 13 June 2013 the Appellant was contacted by the KPA by the telephone and he confirmed that the loss Sapossession over the claimed property took place in 1952, when the land was sold to the SOE "Agromorava" (pages No 105,114 and 115 of the case file).
6. The Kosovo Property Claims Commission through its Decision KPCC/D/A/212/2013 dated on 21 August 2013 decided to dismiss the Claim as being outside its jurisdiction, on the ground that the Appellant has failed to show that his Claim involved the circumstances directly related to or resulting from the 1998/1998 conflict.
7. The Decision was served on the Appellant on 06 February 2014. He filed an Appeal on 28 February 2014.
8. On 16 March 2016, this Court issued an Order to the Cadastre Office of the Municipality of Vitia/Vitina requesting the latter one to provide the Supreme Court with the explanation if the Judgment No 246/94 rendered by the Municipal Court of Vitia/Vitina on 9 November 1994, which became final on 20 December 1994, has ever been executed, as well, as the documentation of the full cadastral history of property: cadastral parcel 619/2, 6th class cultivated land with the surface 02.04.88 ha, located at place called Gërmovë/Grmovo.
9. On 14 April 2016 the Municipal Court of Vitia/Vitina responded to the mentioned Order by stating: "*The Department of Cadastre of the Municipality of Vitia/Vitina does not possess any data on changes, registration, division, consolidation, or other information related to the disposal of the immovable properties for the period from 83-85 to 1999. However, M.K. did not apply after 1999 to register his alleged rights over the property before the Cadastre. The land parcel number 619 has never been divided into 619/2 and it has been registered under the name of the SOE 'Agromorava'. The land parcel No 619 was privatized in 2009 by the Purchase Contract No 1450/90 of 24 July 2009".*

Allegations of the Appellant

10. The Appellant challenges the KPCC's Decisions as, according to him, it rests upon an incomplete determination of the facts and wrongful application of substantial law. He underlined moreover that he had possessed the claimed property in an uninterrupted manner from 1995 to June 1999.
11. In the Appeal, he gives a detailed presentation of the documents that he has submitted in order to confirm his repossession right and motions that the Supreme Court schedules a hearing session whereby his neighbours in the capacity of the witnesses would be summoned to ascertain the truth in relation to the claimed property and the fact that he is the owner of the claimed property.

12. Finally, the Appellant requests the Supreme Court to accept the Appeal and make a new decision though which his right to repossess the claimed property would be established

Legal reasoning:

13. The KPCC, in its challenged Decision, mentioned the fact that the Appellant failed to show that his Claim involves circumstances directly related to or resulting from the 1998-1999 conflict. The Appellant argues instead that it was not true he had ever informed the Executive Secretariat that the loss of possession took place already in 1952.
14. After having reviewed the documents contained in the case file, the Supreme Court is of the opinion that the assessment of the KPCC was correct and the arguments raised by the Appellant could not lead to the modification of the Decision.
15. As it can be seen from the case file, the Appellant was allegedly contacted by the KPA via telephone and apparently he had confirmed that the loss of possession over the claimed property took place in 1952. Article 99 paragraph 1 of the Law on Contested Procedure stipulates that the claim, reply to the claim, appeals and other statements, requests and motions addressed to the court are to be submitted in writing. The requirement of the written form is also met in case of submissions sent through telegraph, fax or electronic mail in case the sender is indicated.
16. There is no evidence in the case file proving that the Appellant submitted a written statement declaring that the loss of possession took place in 1952. A telephone conversation cannot be considered as the submission which content affects the outcome of the proceedings.
17. However, the Supreme Court considers that the outcome of the proceedings before the KPCC was correct. In the light of the documentation gathered in the case file the only valid conclusion about the property/possession rights of the Appellant is that none of the evidence shows indeed that the Appellant was in possession of the claimed property before or during the conflict and that the loss of possession of it took place due to the conflict.
18. The Appellant did not submit any document with that regard. In particular, he did not prove that the Judgment of the Municipal Court of 9 November 1994 has ever been executed, and as a consequence M.K. obtained the possession of the claimed property, which subsequently could have been lost due to the conclict.The Executive Secretariat of the KPA instead, has found ex oficio, the Certificate for Immovable Property Rights showing that the claimed property was registered under the name of third party, on the basis of the Contract on Sale concluded between the Privatization Agency of Kosovo (henceforth: "the KTA") and the third party. Prior to the privatization of the claimed property by the KTA, it had been registered under the name of the Socially Owned Enterprise - Agricultural Compound "AgroMorava".
19. Considering what was mentioned above, the Supreme Court contends that the Claim falls outside the jurisdiction of the KPA. The fact that within the cadastral registers the claimed property appears to be registered as the socially - owned property excludes the possibility for the KPA to examine the case. For that reason the Claim was to be dismissed and the Appeal rejected as unfounded.

20. In case the Appellant would wish to question the legal title of the third parties to the claimed property, the proceedings should involve all the interested parties. Since the claimed property apparently was subject to sale in 2009, the KTA and the Supreme Court may not decide on potential re-possession of the claimed property without granting the parties to that Sale Contract, the opportunity to defend their rights.
21. Regarding the Appellant's request for the compensation for the use of the property without his consent, under the Law No 03/L-079 neither the Commission, nor the KPA Appeals Panel of the Supreme Court has jurisdiction to decide on it.
22. In the light of the foregoing, pursuant to Section 13.3(a) of the Law 03/L-079, it was decided as in the enacting clause of this Judgment

Legal Advice

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

Sylejman Nuredini, Presiding Judge

Anna Bednarek, EULEX Judge

Beshir Islami, Judge

Sandra Gudaityte, EULEX Registrar