

**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-93/14

Prishtinë/Priština,

6 April 2016

In the proceedings of:

D.P.

Vrbica n.n.

34300 Arandelovac

Republic of Serbia

Appellant

vs.

T.I.

Bardhasan/Bardosan

Gjakovë/Đakovica

Appellee 1

A.S.

St. Sadik Stavileci No. 23

Gjakovë/Dakovica

Appellee 2

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Beshir Islami, Presiding Judge, Anna Bednarek and Rolandus Bruin, Judges, deciding on the Appeal against the Decision of the Kosovo Property Claims Commission KPCC/D/A/212/2013 (case files registered at the KPA under KPA35730) dated 21 August 2013, after the deliberation held on 6th April 2016, issues the following:

JUDGMENT

- 1. The Appeal of D.P. against the Decision of the Kosovo Property Claims Commissions No. KPCC/D/A/212/2013 dated 21 August 2013 as far as it concerns the case registered under KPA35730, is rejected as unfounded;**
- 2. The Decision of the Kosovo Property Claims Commissions no. KPCC/D/A/212/2013 dated 21 August 2013 as far as it concerns the case registered under KPA35730, is confirmed.**

Procedural and factual background

1. On 13 April 2007, D.P. (hereinafter: the Appellant) filed a Claim to the Kosovo Property Agency in the capacity of the family member of the property right holder – namely his mother M.P., seeking the re-possession of the immovable property located in Gjakova Vanvarosi, Gjakove/Djakovica Carev Potok, cadastral parcel No. 4398/4 with a surface of 00.01.50 ha, with pasture field without buildings - shrubbery/forest (hereinafter: the claimed

property). He stated that he had lost the possession over the immovable property on 17 June 1999 due to the circumstances related to the armed conflict.

2. To support his Claim, the Appellant provided the Kosovo Property Agency (hereinafter: the Agency) *inter alia* with the:

- Possession List No. 969 dated 10 March 1998 issued by the Cadastral Institute for Gjakovë/Đakovica Municipality, which indicates the Republic of Serbia as the owner and M.P. as the user of the claimed property;
- Power of Attorney signed by M.P, granting her son D.P. the authority to represent her before all courts and state bodies in cases related to the property rights over the immovable property registered in the Possession List No. 969, as well as to sell it under the conditions and for the price indicated by the attorney. Through the same PoA M.P. revoked the authorisation given previously to V.I. to act on her behalf and represent the Appellant and sign on her behalf the sale contract regarding the property registered in the Possession List mentioned above. The PoA was subsequently verified by the Municipal Court in Arandelovac on 14 November 2002 under No. 3979/2002;
- Copy of the claim filed before the Municipal Court in Gjakovë/Đakovica against T.I. for the annulment of the contract on sale of immovable property concluded on 11 May 1996;
- Decision of the Municipal Directorate for Cadastre, Geodesy and Consolidation in Gjakovë/Đakovica, dated 22 September 2004, No. 952-04-437/04, related to the amendments of the Possession List No. 969 with regard to the name of the owner of the immovable property; in the Possession List no. 969 the claimed property will be evidenced in the name of T.I. ;
- Contract on Sale of Immovable Property concluded orally in June 1999; the Contract itself bears the date:11 May 1996; according to the Contract M.P., represented by V.I., sold *inter alia* the claimed property to T.I.. The signatures on the Contract were legalised by the Municipal Court on 12 June 2001;
- Copy of Death Certificate of M.P., from which it appears that the alleged property right holder died on 1 May 2010;

- Copy of the Appeal filed to the District Court in Pejë/Peč against the Judgment rendered in the case number C 447/10 on 27 July 2012 by A.S. , as well as the “Amendment to the Appeal” dated 3 October 2012;
 - Copy of the Judgment rendered by the Municipal Court in Gjakovë/Đakovica on 27 July 2012 in the case No. C 447/10 with which the Respondent in the mentioned case, A.S. was obliged to leave the immovable property registered in the Possession List No. 969 and hand it over to the Claimant in the case T.I. ;
 - Handwritten not fully illegible Agreement of 6 June 2001.
3. Initially the notification was done on 11 May 2007, but it was considered as incorrect. Subsequently, on 17 June 2010 it was notified through a publication in the Gazette No. 2 and the UNHCR’s Property office Bulletin.
 4. On 20 June 2013 the notification expert from the Executive Secretariat payed a filed visit of the claimed property. The claimed property appeared to be occupied by A.S. , who claimed the legal rights to the property and signed a notice of participation.
 5. In the field visit report the party indicated was: T.I. . The latter person signed a notice of participation on 11 April 2013 and stated to claim a legal right to the claimed property. He stated that he had bought the claimed property from now deceased M.P. for the amount of 200,000.00 DM.
 6. On 5 August 2013 A.S. (hereinafter: the Appellee 2) submitted a Reply to the Claim. He explained that he had met with D.P. in Rozaja (Montenegro) and during a conversation they both agreed to sell the claimed property to A.S. for a certain amount of money. The Appellee 2 added that he had never paid that amount to D.P. , as the latter one “never prepared the document for him”. Additionally he mentioned that the mother of D.P. had sold the same claimed property to T.I. , but the price had never been paid. However, T.I. who is indicated in the Possession List as the sole owner, refused to give back the claimed property to D.P. Together with the Reply he submitted copies of the documents related to the case No. C 447/10 being processed by the Municipal Court in Gjakovë/Đakovica.
 7. The Executive Secretariat of the KPA verified the Possession List No. 969, as well as the Power of Attorney legalised by the Municipal Court in Arandjelovac on 14 November 2002 under No. 3979/2002 positively.

8. By the KPCC's Cover Decision no. KPCC/D/C/212/2013 dated 21 August 2013, the Appellant's Claim was dismissed due to the fact, that the property right holder has exercised her property rights by selling the claimed property through her authorised representative to T.I. during the conflict, in June 1999 and that the contract was subsequently certified in 2001. The Commission concluded that the property right holder did not lose the possession as a result of the 1998-1999 conflict, but rather as a result of a voluntary sales transaction that took place during the conflict. Consequently, the Claim falling outside the Commission's jurisdiction stood to be dismissed (KPCC/D/C/212/2013 dated 21 August 2013, paragraphs 36-40).
9. The KPCC's Decision was served on the Appellant on 23 January 2014. The Appellees both received the Decision on 28 February 2014.
10. D.P. filed a "Request to correct the Decision" on 12 February 2014.
11. The copies of the Appeal were served properly on the Appellees on 19 May 2014 (A.S.) and 17 June 2014 (T.I.), but none of the Appellees filed a Response to the Appeal.

Allegations of the Appellant

12. The Appellant explained that he did not file an Appeal, as he had been instructed that in case the Appeal is considered not grounded he would be obliged to cover the court fees. He indicated that the reasoning of the Commission contained in paragraph 38 was not correct, as he had never received any "portion of the purchase price".

Legal reasoning

13. The Appellant filed a "request to correct the Decision" and indicated that he did not submit an Appeal, as he was not willing to pay the court fees in case the Appeal is not considered grounded. Taking into consideration that the law in force does not foresee the possibility to file other complaint, but an Appeal, thus the submission of D.P. is being considered as an Appeal.

14. The Supreme Court of Kosovo found that the appealed KPCC's Decision was issued in full and fair determination of the factual situation and on such ground both the material and procedural law was properly applied; therefore, the Appeal has to be rejected as unfounded.
15. The Appellant argued that he had not stated during the proceedings before the Commission to have received half of the purchase price and on that argument he based the Appeal. The Supreme Court contends though that the fact whether the Appellant received half of that price, the whole sum, or hadn't received any of the instalments remains without meaning for the purpose of the issuance of the final Judgment.
16. The mere fact that the parties: M.P. represented by the authorised person on one side as the seller and T.I. on another side as the buyer, have concluded the purchase contract was not questioned by any of the parties to these proceedings. The contract was subsequently verified by the competent Municipal Court, and that fact was neither questioned by any party to these proceedings. Consequently the purchase contract dated 11 May 1996 has to be considered as valid and having legal effects. It was a valid basis for the changes in the Possession List with regard to the owner of the claimed property.
17. It is important to underline in this place, that the parties indicated that the contract was signed indeed in 1999, but antedated due to the conflict situation. That circumstance however has no influence on the final conclusion that the contract is binding and has legal effects. That fact confirms that the owner of the claimed property did not lose the possession of it due to the conflict and was able to exercise his property right by voluntarily disposing of it in 1999.
18. The Appellant argued that he had obtained any part of the price for the sale of the claimed property. Neither that fact however, may have the stance with regard to the final assessment of the grounds of the Appeal. Lack of the payment of the sale price in total, or in any part does not disqualify the contract and remains without any effect on its validity. The transfer of the property rights in 1999 and 2001 took place at the moment the agreement is signed and the signatures were legalised by the Municipal Court. This follows from Article 20 of the Law on Basic Property Relations (O.G. SFRY No. 6/80) as read in conjunction with Article 4 paragraph 2 of the Law on Transfer of Immovable Property (O.G. SRS No. 43/81) that were in force at that time. If one of the parties does not fulfil the obligations arising from the contract, the other party is entitled to file a claim to the competent court requesting to force the other party to fulfil its obligations (eg. to pay the sale price).

19. D.P. indicated during the proceedings before the KPCC that she had revoked the Power of Attorney granted to the wife of T.I. that was used while signing the purchase contract. Anyhow, the Power of Attorney was revoked in 2002, which means after the contract was concluded and certified by the competent Court. For that reason the revocation of the authorisation does not affect the contract itself.
20. The Supreme Court is of the opinion that the Appellant did not prove that he still has the legal title to possess the claimed property. The Appellant is, and according to the evidence gathered, he never was the owner of the claimed property. The legal title to the property was effectively transferred by his late mother.
21. All the above mentioned arguments lead the Supreme Court to the conclusion that the KPCC has taken a correct Decision for the right reasons when dismissing the claim of the Appellant and applying Section 11.4(b) as read in conjunction with Section 3.1 of the Law No. 03/L-079 amending the UNMIK Regulation No. 2006/50. The KPCC was right while considering that the Appellant has failed to prove to have lost the property right over the premise due to the circumstances related to the 1998/99 conflict.
22. Consequently, the Appellant's Appeal is rejected as unfounded and the appealed KPCC's Decision is confirmed as correct and based on properly applied law, pursuant to Section 13.3 (c) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079.

Conclusion

23. Based on the aforementioned and in pursuant to Section 13.3.(c) of the Law No. 03/L-079 and Article 195, paragraph 1(d) of the Law on Contested Procedure, it is decided as in the enacting clause of this Judgment.
24. This Judgment has no prejudice to the Appellant's right to refer his case to the competent court outside the jurisdiction foreseen by provisions of Section 3.1 of Law no. 03/L-079.

Legal advice

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 legal remedies.

Beshir Islami, Presiding Judge,

Anna Bednarek, EULEX Judge

Rolandus Bruin, EULEX Judge

Sandra Gudaityte, EULEX Registrar