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-135/15

Prishtinë/Priština,
27 September 2017

In the proceedings of:

Q.B.

Appellant

Vs.

N. Š

Appellee

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Beshir Islami, Presiding Judge, Krassimir Mazgalov and Shukri Sylejmani, Judges, deciding on the appeal against the decision of the Kosovo Property Claims Commission KPCC /D/R/237/2014 (case file registered with KPA under 47721) dated 30 April 2014, after deliberation held on 27 September 2017, issues this:

JUDGMENT

1. **The appeal of Q. B. against the Decision of Kosovo Property Claims Commission KPCC/D/R/237/2014 dated 30 April 2014, as far as the Claim registered under KPA47721 is concerned, is rejected as ungrounded.**

2. **The Decision of Kosovo Property Claims Commission KPCC/D/R/237/2014 dated 30 April 2014, as far as the Claim registered with Kosovo Property Agency under KPA47721 is concerned, is upheld.**

Procedural and factual background

On 14 September 2007, N.Š. (hereinafter: "Appellee") filed a Claim with Kosovo Property Agency (hereinafter: "KPA"), seeking confirmation of the ownership right over cadastral parcel no. 2837/28, "Park Kusari" street n.n, cadastral zone Gjakovë/Djakovica, with a surface of 2 ar and 81m^2 (hereinafter: "claimed property"). He stated that he was the owner of the claimed property and that the loss of its possession was related to the armed conflict that occurred in Kosovo in 1998/99, indicating June of 1999 as date of loss.

In order to support his Claim, the appellee provided the KPA with the following documents:

- Allocation decision 19 No. 464-98/21 dated 11 July 1994 by which the claimant was allocated for permanent use a construction land, claimed property, and by which the requirements for regulation of construction land were determined, as well as the price to be paid by the appellee.
- Description of the possession list no. 4232, issued on 25 May 2004, by the cadastral office for Gjakova, displaced in Serbia, which states that the claimed property is listed in the name of the claimant by the cadastral office for Gjakova, dislocated in Serbia, which shows that the claimed property is listed in name of the claimant.
- Contract No.461-29 dated 20 July 1994 concluded between the Fund for Construction Land, Roads and Municipal Activities in Gjakova and the Claimant.
- Identification card on 7 February 2000 by Serbian authorities in Kraljevo.
- Copy of Decision by the Housing and Property Claims Commission HPCC/163/2004/C dated 9 December 2004, concerning the claim previously filed with Directorate on Housing and Property Matters by which the Commission, through a declarative order, stated that on the day the apartment property is destroyed the claimant meets the criteria for an order for return of apartment property, but this Commission, based on UNMIK/REG/2000/60, had mandate only for the apartment property and adjacent apartment property which was destroyed to the extent that is was uninhabitable.

Claim notification was carried out on 2 October 2008. The claimed property was found occupied by Q. B.(hereinafter: "Appellant"). He claimed a legal right over the property but he did not sign the notice of participation in the proceedings. The property was visited by KPA officials and on 11 February 2011 it was ascertained that identification was performed correctly based on GPS coordinates.

On 8 October 2009, the appellant filed his response to the claim. He stated that the claimed property belongs to the appellee, but through the lawyer T. B. they had reached an agreement for the appellant to construct a house and in the future to purchase the parcel. He further stated that the house claimed by the appellee does not exist and that he constructed a new house through his own investments. To support his statements, he enclosed:

- Copy of the Ruling issued by Municipal Court in Gjakova P.Nr.725/04 dated 4 June 2009 which terminated the criminal proceedings against appellant for the criminal offence of ˝occupation of immovable property˝ under Article 259, paragraph 1, of the Criminal Code of Kosovo, because of absolute statute of limitation on criminal prosecution.
- A number of bills and photos of the original building and of new building, which have no particular relevance for legal claims.

KPA Executive Secretariat positively verified all the documents submitted by the appellee.
By the Decision KPCC/D/R/237/2014 dated 30 April 2014, the Commission recognized the appellee's property right over the claimed property and declared the appellee as having the right of possession over the said property. The Commission found that the respondent in this case, now appellant, did not present a valid legal defence.
On 27 November 2015, the KPCC decision was served on the appellee. The appellant received the KPCC decision on 19 September 2014 and filed an appeal on 14 October 2014.

Allegations of the appellant

The appellant objects to the KPCC decision because it is based on erroneous and incomplete determination of the factual situation and involves wrongful application of the substantive law. According to the appellant, the Commission's findings are based on invalid evidence and erroneous application of legal provisions because the residential house does not exist anymore. According to appellant's allegation, the matter concluded in his favour by the Decision of the Housing and Property Claims Commission, HPCC. Further, he mentions the fact that, according to him, he was acquitted of criminal liability although the Court decision was about termination of criminal prosecution due to absolute statute of limitation. The appellant accepts the fact that the parcel is property of the appellee, but that he built the new house with his own funds. Because of the aforementioned reasons, the appellant requests from the Supreme Court to quash the Decision and reconsider the case.

Allegations of the appellee

The appeellee claims that appellant's appeal is ungrounded. He reiterates that he is the rightful owner of the claimed property. According to the appellee, he is the owner of the claimed property and denies any agreement with the appellant concerning the sale of the property. There is no evidence that he filed a response to the appeal.

Legal reasoning

The appeal is timely in view of Article 12.1 of the Law no. 03/L-079 on the Amendment of UNMIK Regulation 2006/50 on Resolution of claims involving private immovable property, including commercial and agricultural property which foresees that: "*Within thirty (30) days of the notification to the parties by the Kosovo Property Agency of a decision of the Commission on a claim, a party may submit an appeal against such decision through Executive Secretariat of Kosovo Property Agency in the Supreme Court of Kosovo*".

The Supreme Court, after reviewing the documents in the case file and after evaluating the appealed Decision, as well as submissions of both parties, found that the appeal is ungrounded. In the opinion of the Supreme Court of Kosovo, the appealed KPCC Decision was issued following complete and correct determination of the factual situation as well as correct application of the substantive and procedural law. Therefore, the appeal is rejected as ungrounded pursuant to Articles 13.3(c) of the Law no.03/L-079 and Article 195.1 (d) of the Law no.03/L-006 on the Contested Procedure.

The appellant, neither during proceedings nor at the appeal stage, did not present a single document by which he would contest the ownership of the appellee.

The Supreme Court of Kosovo notes that KPCC Decision was rendered after the possession list, filed by appellee, was found and verified in the Gjakova cadastral records which proved that the claimed property was registered in the name of the appellee. The appellant had accepted this fact but had alleged that the house constructed after the conflict was his, because he was in negotiations to purchase the property from the owner.

Firstly, it has to be underlined that the appellee stated in the Claim that he was in possession of the claimed property before the conflict in Kosovo occurred and that those circumstances were not disputed by the appellant. The appellee also stated that he was forced to abandon the premise due to safety concerns in 1999. This circumstance was not disputed by the appellant either. The appellant failed to provide any valid evidence that would dispute the appellee's ownership.

Secondly, the fact that appellant constructed a building – house in someone else's property without obtaining permission from the owner or authorities (the appellee categorically denies to have given permission) does not dispute the property right of the appellee. This construction was carried out unlawfully.

Furthermore, KPCC allowed for the possibility of delaying execution of the order pursuant to Article 22.3 of Administrative Instruction 2007/5 as amended by the Law 03/L-079 by considering the possibility of amicable settlement of the issue of the building constructed in the property without owner's permission, but in no way does this dispute the fact that appellee had the property right just before the conflict and lost it because of the armed conflict in 1998-1999. On these bases, the KPCC decision was issued according to the law and no violations of substantive or procedural nature were found.

Based on the reasons above and pursuant to Article 13.3.(c) of the Law no.03/L-079 and Article 195.1(d) of the Law on Contested Procedure, it has been decided as in the enacting clause of this Judgment.

Legal advice

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

Beshir Islami, Presiding Judge

Krassimir Mazgalov, EULEX Judge

Shukri Sylejmani, Judge

Bjorn Olof Brautigam, EULEX Registrar