SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA

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

GSK-KPA-A-018/12 **Prishtinë/Priština**

24 August 2012

In the proceedings of:

M.S

Claimant/Appellant

vs.

1. T.K

2. D.R

3. G.T.LL

Respondents/Appellees

represented by

Lawyer
R.GJ

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of Anne Kerber, Presiding Judge, Elka Filcheva-Ermenkova and Sylejman Nuredini, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/113/2011 (case files registered at the KPA under the numbers KPA44031, KPA44015, KPA44021 and KPA44026), dated 22 June 2011,

after deliberation held on 24 August 2012, issues the following

JUDGMENT

1- **The decision of the Kosovo Property Claims Commission KPCC/D/A/113/2011, dated 22 June 2011, as far as it relates to the cases registered under the numbers KPA44031, KPA44015, KPA44021 and KPA44026 is confirmed.**

2- **Costs of the proceedings determined in the amount of € 60 (sixty) are to be borne by the appellant and have to be paid to the Kosovo Budget within 90 (ninety) days from the day the judgment is delivered or otherwise through compulsory execution.**

Procedural and factual background:

On 4 July 2007, M.M.S filed four claims with the Kosovo Property Agency (KPA), claiming to be recognized as the owner of several parcels of land acquired by inheritance and seeking repossession. She asserted that her late father M.C had been the owner of the claimed parcels, that she had inherited them and that they were lost on 12 June 1999 as a result of the circumstances in Kosovo in 1998/99.

The data of the claimed parcels, all registered in Possession List No. 3 of Gjakovë/Đakovica, Cadastral Municipality Smaq/Smac, issued on 20 October 2002, are the following:

Number of appeal and KPA case file	Data of the parcels
GSK-KPA-A-018/12 (KPA44031)	Parcel No. 73, at a place called "Lug Kušavec" in Smaq/Smac, Gjakovë/Đakovica, a 5th class orchard with a surface of 11 ar and 25 m^2;
GSK-KPA-A-019/12	Parcels No. 18 and 19, at a place called "Lug Kušavec" in Smaq/Smac,

(KPA44015)	Gjakovë/Đakovica, a 4th class pasture and a 6th class field with a total surface of 63 ar and 2 m²;
GSK-KPA-A-020/12 (KPA44021)	Parcel No. 35, at a place called "Lug Kušavec" in Smaq/Smac, Gjakovë/Đakovica, a 6th class field, a 4th class forest and "barren land" with a total surface of 5 h, 57 ar and 70 m²;
GSK-KPA-A-051/12 (KPA44026)	Parcels No. 36, 37 and 38, at a place called "Lug Kušavec-Šakov" in Smaq/Smac, Gjakovë/Đakovica, a 6th class field, a 4th class pasture and a 6th class meadow with a total surface of 2 h, 54 ar and 33 m²;

To support her claim, the claimant provided the KPA amongst others with the following documents:

- Possession List No. 3 issued by the Republic of Serbia, Republic Geodesy Office, Municipality of Gjakovë/Đakovica, cadastral zone Smaq/Smac on 28 October 2002, showing that the claimed parcels were registered under the name of M.M.C;
- Death Certificate issued by the Republic of Croatia, Municipality of Bilogrska, Registrar's Office Bjelovar on 31 January 2007, showing that M.C, born in ……., had died on 23 January 2007 in Bjelovar;
- Inheritance Decision O.br. 74/2008, issued by the Municipal Court in Gjakovë/Đakovica (Republic of Kosovo) on 11 February 2009, according to which M.S inherited the claimed property;
- Certificate for the Immovable Property Rights issued on 23 March 2009 by Kosovo Cadastral Agency for the Municipality of Gjakovë/Đakovica, cadastral zone Smaq/Smac, showing that M.S was the owner of the claimed parcels (parcel 73 here is apparently considered as part of parcel 72) – No 70713075-00003;
- Birth Certificate, issued by the Republic of Croatia for the Municipality of Bjelovar on 31 January 2007, showing that M.Z was born on ……...as the child of M.C;
- Marriage Certificate issued by the Republic of Serbia for the Municipailty of Rakovica, showing that M.Z on 3 August 1977 married D.S in Belgrade.

The KPA verified Possession List No. 3, the Death Certificate, the Inheritance Decision and the Certificate for the Immovable Property Rights.

The KPA organized the notification of the claims several times. At last, in 2010 (KPA44021) and 2011 (the other cases) the notification team went to the places where the parcels were allegedly situated and put up signs indicating that the property was subject to a claim and that interested

parties should have filed their response within 30 days. During the notifications in 2011, the lawyer R.GJ was present and signed a notice of participation. Later on all notifications were checked based on cadastral data, GPS coordinates and orthophoto and were found to have been accurate.

Already in June 2010, R.GJ had approached the KPA, stating to represent parties who claimed a legal right to the properties. In July 2010 he submitted powers of attorney given by D.N.R (regarding a property of approximately 20 ar), G.LL (regarding a property of approximately 7 ha) and T.K (regarding Parcel No. 19 with a surface of 2 ha 50 ar).

The respondents, represented by R.GJ, declared that in 1969 B.K and N.R purchased land from M.M.C, B.K 2 and a half hectar for 6.000 denar, N.R 20 ar. Furthermore, the deceased T.LL in 1970 had bought 7 ha of the property registered in Possession List No. 3 for 15.000 dinars. They submitted to the KPA the following documents:

- Written contract of 20 October 1969, according to which M.T.C "now residing in Bjelovar, street Radecara 63", represented by his son M.C (power of attorney Nr. Cv.nr.2135/69 certified before the Municipal Court of Bjelovar) sells to GJ, N and B.K the cadastral parcel No 19 with a surface of 2 ha 50 ar (forest at the place Lug Kusavec) for 6.000 dinar; in the contract the seller declares that the purchase price has been paid;
- Written contract of 20 October 1969, according to which M.T.C, represented by his son, sells to N.R 20 ar of parcel No. 19, registered in Possession List No. 3, for 1.000 dinar; in the contract the seller declares that the purchase price has been paid;
- Written contract of 19 May 1970, according to which M.C for 15.000 dinar sells to T.LL 7 ha of land located at the place called "šokovica" (the Court notices that several parcels registered in Possession List No. 3 are located at places called "šakov" or "šakovica" so the Court concludes that subject of the contract could be land registered in Possession List No. 3); in the contract the seller declares that the purchase price has been paid;
- Handwritten contract of 26 April 1968 in which J.C sells to P.K and N.N 2,5 or 4,5 ha (the copy is almost illegible) of forest for the amount of 600.000 dinar (this contract is apparently connected with the contract of 20 October 1969).

At the request of the KPA, the respondents explained that they had not certified the contracts as they had wanted to avoid the tax on transfer. Later the buyers agreed to pay the tax and requested the seller to go to the court yet the seller requested more money. They added that the seller in that time wanted repossession but that the procedures were never finished.

According to a note in the files, the claimant, to whom the documents submitted by the respondents were disclosed, replied that the contracts were false. According to her, her father M.C had inherited the property from his father M.T.C. She explained that her father M.C belonged to the military personnel. In 1970 he was sent to work in Bjalovar. The claimant's father together with his family moved to live in Croatia and sold most of the property, yet, according to the claimant, not the claimed property. From that time on, the respondents occupied the claimed properties and put up the false sales contracts. The claimant added that during 1987 her father wanted to return in his properties but was threatened by the respondents. Asked about the use of the claimed property during 1998/1999, the claimant answered that the respondents continuously used the claimed properties from 1970.

On 22 June 2011, the KPCC in its decision KPCC/D/A/113/2011 dismissed the claims. As the claimant had advised the KPA that her family did not have possession of the claimed properties from 1970 onwards and later confirmed that she was neither in possession nor using the claimed properties at the time of the 1998-99 conflict in Kosovo, the alleged loss of property rights could not be said to be related to the conflict.

The decision was served on the claimant on 30 November 2011. On 10 November 2011, the decision had been served on the representative of the respondents.

On 27 December 2011, the claimant (henceforth: the appellant) filed an appeal with the Supreme Court.

She stated that she never had informed the KPA as noted in the KPCC's decision. She concedes that her legal predecessors discussed the sales with the appellees, yet states that the sales had never been conducted. She continues that her grandfather and her father came to the estate almost every year, stayed there for a couple of days in order to show to the neighbours that they did not give up the land and sometimes leased out the land. The appellant furthermore stated that the appealed decision was in contradiction to the decision of the Housing and Property Claims Commission of 22 October 2004 No DS606023 (which relates to a parcel No. 72).

The appellant requests to "refuse the claims of the respondent parties" and confirm her rights over the property registered in Possession List No. 3.

The appellees request to reject the appeal as ungrounded and confirm the KPCCs decision.

They confirm their previous statements. They deny that the appellants father or grandfather visited the parcels but state that during the years 1968-1970 the whole property was bought by them and the whole purchase price was paid. In addition they claim adverse possession as they possessed the land bona fide.

The Court has joined the cases.

Legal reasoning:

The appeal has been filed within the deadline of 30 days prescribed by the law (Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079). Yet it is not grounded.

The KPCC correctly assessed that the claims do not fall within the scope of its jurisdiction.

According to Section 3.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079, a claimant is entitled to an order from the Commission for repossession of the property if the claimant not only proves a right to the property but also that he or she is not now able to exercise such property rights by reason of circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.

In the files, the Court found a note of a KPA officer, who described a conversation with the appellant on 19 January 2011. According to this note, the appellant stated that the purchase contracts submitted by the appellees were false. According to her, her father M.C had inherited the property from his father M.T.C. In 1970 her father was sent to work in Bjalovar. The claimant's father together with his family moved to live in Croatia and sold most of the property, yet, according to the claimant, not the claimed property. From that time on, the respondents occupied the claimed properties and put up the false sales contracts. The claimant added that during 1987 her father wanted to return in his properties but was threatened by the respondents. Asked about the use of the claimed property during 1998/1999, the claimant answered that the respondents continuously used the claimed properties from 1970.

This statement makes it very clear that the loss of the property was not connected to the conflict of 1998/1999 but to the moving of the family to Croatia in 1970.

In her appeal the claimant states that she never informed the KPA as noted in the KPCC's decision. As the Court found the abovementioned notice, which includes a detailed description of the appellant's statement that speaks for its truthfulness, the Court has no doubts that the claimant informed the KPA accordingly and now just tries to adjust her statements in her favour. The Court wants to note that the fact that the appellant in her appeal conceded that there had been the discussion of a sale between her legal predecessors and those of the appellees is an indication that the statement to the KPA was noted correctly. Furthermore, the Court noticed the power of attorney of 2 April 1997, given by M.C to the appellant in regard to the parcels Nos. 18, 19, 35, 36, 37 and 38. In this power of attorney M.C authorizes the appellant to take all legally based action "*for the protection of my interests regarding the repossession of the property, sale of property* […]" (emphasis by the Court). A power of attorney regarding repossession of the property, however, is only necessary if the possession of the property has been lost. From this power of attorney, accordingly, the Court concludes that the property had been lost already in 1997 and, consequently, was not lost because of the conflict in 1998/1999. That parcel No. 73 is not included in this power of attorney can mean that either the parcel already was sold (it is, however, included in a power of attorney of the year 2004) or that it was not occupied in 1997. Either way, there is no indication that this parcel was lost to the appellant because of the armed conflict.

For her allegation that her grandfather and father had visited the parcels regularly and leased them the claimant has not given any evidence.

That the appellant obtained an inheritance decision according to which she inherited the litigious parcels from her father is irrelevant for the question whether the loss of the property was related to the armed conflict. The same reasoning applies to the decisions of the Municipal Court in Prishtinë/Priština, U. 2511/90.

That the claimant submitted tax receipts for the years 1990 and 1997-1999 is also not relevant for the question of jurisdiction. The receipts do not show the property for which the taxes had been paid. And even they were related to the litigious parcels, the payment of taxes does not say anything about whether the loss of possession already had taken place or not.

The question whether the sales contracts submitted by the appellees are falsified or genuine as well as the question whether these contracts are valid or whether the appellant is the owner of the litigious parcels do not concern the issue of jurisdiction. These questions would have to be answered only if the case would be within the jurisdiction of the Court and the Court had to decide on the merits of the case.

The decision of the KPCC is not in contradiction to the decision of the Housing and Property Commission as the HPCCs decision is in regard to a parcel which is not subject of these proceedings.

Consequently, the KPCC's decision to dismiss the claim as not falling within the scope of jurisdiction of the KPCC was correct and the appeal had to be rejected as ungrounded.

The Courts decision is without prejudice to the right of the appellant to seek confirmation of her property before the competent local authorities.

Costs of the proceedings:

Pursuant to Annex III, Section 8.4 of AD 2007/5 as amended by Law No. 03/L-079, the parties are exempt from costs of proceedings before the Executive Secretariat and the Commission. However such exemption is not foreseen for the proceedings before the Appeals Panel. As a consequence, the normal regime of court fees as foreseen by the Law on Court Fees (Official Gazette of the SAPK-3 October 1987) and by AD No. 2008/02 of the Kosovo Judicial Council on Unification of Court fees are applicable to the proceedings brought before the Appeals Panel.

Thus, the following court fees apply to the present appeal proceedings:

- court fee tariff for the filing of the appeal (Section 10.11 of AD 2008/2): € 30
- court fee tariff for the issuance of the judgment (10.21, 10.12,10.1 and 10.15 mutatis mutandis of AD 2008/2) considering that the value of the property at hand could be reasonably estimated as being above € 100.000: € 30 (€ 50 + 0.5% of 90.000, yet not more than € 30).

These court fees are to be borne by the appellant who loses the case. According to Article 46 of the Law on Court Fees, when a person with residence abroad is obliged to pay a fee, the deadline for

fees' payment is not less than 30 (thirty) and no longer than 90 (ninety) days. The Court sets the deadline to 90 (ninety) days. Article 47.3 provides that in case the party fails to pay the fee within the deadline, the party will have to pay a fine of 50% of the amount of the fee. Should the party fail to pay the fee in the given deadline, enforcement of payment shall be carried out.

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 remedies.

Anne Kerber, EULEX Presiding Judge

Elka Filcheva-Ermenkova, EULEX Judge

Sylejman Nuredini, Judge

Philip Drake, Chief Registrar to the Assembly of the EULEX Judges