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-48/12 **Prishtinë/Priština, 01 November 2012**

In the proceedings of

Sh. K.,
A. (M.) D.,
Xh. E.,
Sh. Sh. and
M. H.
Prishtinë/Priština
Respondents/Appellants

vs.

M. M. P.
Belgrade
Claimant/Appellee

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/106/2011 (case file registered at the KPA under the number KPA28084), dated 13 May 2011, after deliberation held on 01 November 2012, issues the following

JUDGMENT

1- **The appeals of Sh. K., A. (M.) D. and Xh. E. are dismissed as impermissible due to the lack of legal interest.**
2- **The appeals of Sh. Sh. and M. H. are admissible.**
3- **The decision of KPCC/D/A/106/2011 (case file registered at the KPA under the number KPA28084 in the part related to parcel 1893/2) is annulled as rendered in the absence of jurisdiction.**
4- **The claim of M. M. P. No. KPA28084, related to parcel 1893/2 is dismissed as falling outside the jurisdiction of the KPCC.**
5- **Costs of the proceedings determined in the amount of 60 € (sixty euro) are to be borne by the appellee/claimant M. M. P. and have to be paid to the Kosovo Budget within 90 (ninety) days from the day the judgement is delivered otherwise through compulsory execution.**

Procedural and factual background:

The Claim:

On 27 February 2007 M. M. P. filed a claim with the Kosovo Property Agency (KPA) seeking repossession over 1/3 ideal part of parcel 1893 in Pristina, described as first class field of 83 ar and 75 m².
She claimed that the parcel belonged to her late husband M. P., who died on 5 November 1999.
In support of the claim were presented: a decision taken by the "Third Municipal Court of Belgrade", dated 19 December 2001, file No. 2487/2001, taken in inheritance proceedings; possession list No. 1866, issued by the Cadastral Office of Pristina under No. 952-01-1/96-347, dated 23 July 1998 in the name of M. P. and possession list No. 1866, issued by the UNMIK on 28 September 2004 in the names of J. P., M. P. and M. P.
In the possession list from 1998 parcel No. 1893 is described as a field of 1 ha 32 ar and 5 m².
According to the possession list from 2004 parcel No. 1893 no longer exists. Instead three new parcels are described: parcel No. 1893/2 of 73 ar and 75 m2, parcel No. 1893/7 of 5 ar and parcel No. 1893/8 of 5 ar with a total surface for the three of 83 ar and 75 m².
Within the folder of the KPA (page 225) there is a satellite picture of what is supposed to be parcel No. 1893, which is now separated into many small parcels – at least 18, these are visible on the picture – from No. 1893/1 to No. 1893/18. There is no data within the file when and as a result of which cadastral plan parcel No. 1893 was transformed by division into 18 different parcels.
The satellite image also shows that at least 15 different buildings, most probably houses, are built within the boundaries of the former parcel No. 1893. There is no data as to when these buildings were erected.

In her claim Mrs P. has stated that the land is usurped by an unknown person.

The KPA has notified potential interested parties regarding the proceedings by putting and information sign on 21 November 2007. The sign described the parcel in question as No. 1893. The notification report stated that the land is not occupied and has no buildings in it. Later, on 1 July 2010 the KPA repeated the notification by publication in KPA Notification gazette No. 3. This means that the notification in 2007 was not certain.

There is no data within the file that interested parties expressed interest to join the proceedings in front of the KPA, even though as seen from the satellite image the property is occupied by many different people, who have built the houses mentioned above. The KPA processed the claim as uncontested but on 14 may 2011, after the issuance of the appealed decision the KPA served at least 17 different individuals with notification for the same decision (pages from 129 to 144 including of the KPA file).

The above mentioned decision, with which the claim was considered founded, was issued on 13 May 2011 under number KPCC/D/A/106/2011.

With an individual decision dated 06 July 2011 the subject of claim and the decision was individualised as 1/3 ideal part of parcels Nos. 1893/2, 1893/7 and 1893/8 with total surface of 83 ar 75 m^2. It is not clear at what point the claim was changed from claim for parcel No. 1893 into a claim for parcels Nos. 1893/2, 1893/7 and 1893/8. As long as the claimant now appellee has not either appealed the decision, nor asked the KPA to supplement it, the Court considers that the subject of the claim as specified in the individual decision reflects the will of the claimant.

The Appeals:

The decision has been appealed by five different individuals: Sh. K., A. (M.) D., Xh. E., Sh. Sh. and M. H.. They all claim rights regarding parts of parcel No. 1893. Sh. K. claims to have bought parcel No. 1893/1; A. D. parcel No. 1893/16, Xh. E. parcel No. 1893/5, Sh. Sh. 6 ar and 63 m^2 of parcel No. 1893/2 and M. H. 10 ar of the same parcel No. 1893/2.

Sh. K. presents a purchase contract dated 28 January 2002, concluded between **S. K.** –his father and M. P. as a seller.

A. D. presents a contract with the same seller from 15 January 2001. In addition A. D. presents a contract between him as a buyer and A. Sh. as a seller according to which on 4 July 2000 the latter sold him a part of parcel 1893 with the surface of the part of 15 ar (it is not at all clear how these 15 ar pf surface were individualized- differentiated from the rest of the parcel). According to a contract from 1 June 1986 **A. Sh.** purchased from M. P. parcel 1893 of 30 ar.

Xh. E. presents a contract from 10.10.2003.

M. P. has died on 5 November 1999, according to the death certificate.

The contracts might have been signed by H. H., to whom during his life time M. P. has allegedly given a Power of Attorney to sell parcel No. 1893 – the POA is dated 16 July 1998. It could be reasoned that the

authorization given with the POA has terminated with the death of Mr. P. – argument after art. 94 (3) of the Law of Contracts and Torst of 1978 , but the validity of these contracts should not be discussed within this decision as they relate to parcels which were not part of the subject matter of the appealed decision. The decision does not relate to parcels Nos. 1893/1, 1893/16 and 1893/5, but only to parcels Nos. 1893/2, 1893/7 and 1893/8.

Sh. Sh. has bought 6 ar and 63 m² from parcel No. 1893/2 on 21 November 1998 and **M. H.** purchased 10 ar from the same parcel on 05 October 1998, i.e. when M. P. was still alive. The validity of the contracts and the property rights regarding these properties were assessed by the Municipal Court of Pristina, according to a decision, issued by this court on 08 July 2005, file No. 963/2005. The Court has accepted that Sh. and H. have proven their rights as they have purchased the land from P. It is not clear how the Court has assessed the existence of the properties as different pieces of land. The parcels are described as 6,63 ar. and 10 ar. of parcel No. 1893/2 without any individual characteristics (just like in the contract of Sh. and D., mentiend above). It is worth mentioning that the Court in 2005 should have taken into account that the land parcel is an undivided land property formed by boundaries and boundary points, located within one cadastral zone and recorded in the Cadastre as a land parcel with a unique number. In the absence of individualization of the two different parts – one of 10 ar and the other of 6,63 ar which are within one and the same parcel No. 1893/2 - without the mentioning of any boundary lines/points it is not at all clear what were the objects of the right of property, as referred to in the decision. In 2005 the cadastral legislation had an explicit definition of what the parcel is - section 2, para 2.9 of the Law No. 2003/25 on Cadastre (04 December 2003), as amended by Law No. 02/L-96 (26 Jan 2007, superseded by Law No. 04/-L-013 (29 July 2011).

On 26 October 2009 the claimant, now appelle, together with M. and J. P. has filed a claim before the Municipal Court of Pristina against H. K., H. M., S. T., H. N., M. Xh., A. D., S. K., Sh. Y., Sh. G. and T. B. for the annulment of the contracts concluded regarding 4179 m² of parcel No. 1893. There is no data as to what stage of the procedure this claim is.

Sh. Sh. and M. H. are not respondents to this claim.

The response to the appeals:

The appellee, claimant in the first instance considers the appeal of Sh. K. inadmissible. He was not a respondent party in the proceedings in front of the KPA, therefore he has no right to appeal. Alternatively on the merits of the appeal, if considered by the court, she claims that the contract between this appellant and her late husband was signed after the death of the latter. She claims that the power of attorney submitted by the appellant was falsified; she obviously refers to the POE given to H. H. The appellee does not express opinion on the other appeals

On 15 June 2012 the appelle M. P., through the UNHCR Property Office in Belgrade has submitted a letter, in which she says that in 1996 her late husband has sold to A. Sh. 30 ar from parcel 1893/2.

Obviously the appelle made a writing error regarding the year, as the purchase in question dates from 10 years earlier -1986, as noted above.
The appelle also explains that Sh. has later sold these 30 ar. to Sh. I., H. N., S. T., A. D. and M. Xh.. She explicitly states that she is not disputing the right to A. sh. to sell these 30 ar, but she upholds her claim under the number KPA28084, regarding parcels 1893/2, 1893/7 and 1893/8. Obviously she claims rights regarding part of parcel 1893/2, as the whole is 83 ar 75 sq.m.
There is no clarity whatsoever how this parcel 1893/2 was sold in parts when there is no partition of the parcel in the cadastre.

Legal Reasoning:

Regarding admissibility of all appeals:
The appeals are admissible. The appellants were not properly notified regarding the proceedings in front of the KPA, therefore their right of appeal has not been precluded.
Section 10.2 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 provides that any person other than the claimant who is purporting to have a right on the disputed property shall become party of the proceedings provided that such person has informed the Executive Secretariat of his/her intention to participate in the proceedings within 30 days of being notified of the claim. For this intention to be brought to the attention of the KPA the person in question has to be informed of the proceeding that had been initiated. Depending on whether such a person responds the procedure in front of the KPA could develop either as uncontested or it could develop into a kind of civil – adversarial proceedings, whenever there is a respondent who would challenge the initial claims – argument after section 10.1 UNMIK/REG/2006/50 as amended by Law No. 03/L-079.
In adversarial proceedings, the parties have to have the opportunity to know and to comment on the claims filed and evidence adducted by the other party. Whenever a person is deprived of this opportunity, his/her right of a fair trial is violated.
The peculiarity of the procedures in front of the KPA is that unlike within the conventional civil cases, the respondent is not known in advance, but the Law presumes that there might be one/ones and therefore demands the adjudicating body "to make reasonable efforts to notify any other person who may have a legal interest in the property".
As already noted the Law in section 10.1 ibid provides that the Secretariat shall "make reasonable efforts to notify any other person who may have legal interest in the property". It does not provide for a specific description of what "reasonable efforts" mean with the exception that "in appropriate cases, such reasonable efforts may take form of an announcement in an official publication". The grammatical interpretation of the text as well as the common logic and existing customs in serving documents and information to parties in adversarial proceedings invoke the conclusion that publication is an exception and it would be applicable only in certain cases, only if appropriate – one possibility would be if there are

no other means to notify the interested person, for example in some civil proceedings it is acceptable to summon a person with a publication in the State gazette if the person has left his/her known address and did not provide a new one. However this solution cannot be always acceptable in the proceedings in front of the KPA as the respondent is not known in advance and in the beginning of the proceedings.

It is up until now accepted that customarily the notification is done by placing a sign (plate) with information regarding the claim in 3 languages (English, Albanian and Serbian) in/on the property in question and as long as the sign has been placed in/on the correct place/object – parcel, house, etc. the notification is considered correctly done and possible interested parties duly notified of the procedure in front of the KPA, unless there is a reason to believe otherwise.

In the current case it is not certain that in 2007 the notification sign was put in the right place. Afterwards, in 2010 a new notification was made, but through publication.

In addition to that in May 2011 many different individuals – at least 17 (for this many there are data in the file), among which one of the appellants- A. D., were notified regarding the decision which the KPCC has already issued. This means that the notification by publication was not considered as proper one by the KPA officers themselves – i.e. if the publication would suffice why would the KPA serve notice of the decision to these 17 people?

Regarding the appeals of Sh. K., A. D. and Xh. E.:

In the current proceedings Sh. K., A. D. and M. H., regardless of the existence or nonexistence of any property rights in their patrimonium have no legal interest in appealing the decision of the KPCC as its subject matter encompasses only rights regarding parcels Nos. 1893/2, 1893/7 and 1893/8. These three appellants claim rights regarding parcels 1893/1, 1893/5 and 1893/16. This means that they have no legal interest in attacking the contested decision of the KPCC and the existence of legal interest is however absolute positive procedural prerequisite for the permissibility of an appeal in civil proceedings –art. 196 in relation to art. 186.3 of the Law on Contested Procedure, which is applicable in front of the Supreme Court in appellate proceedings against decisions of the KPA (section 12.1 of UNMIK/REG/2006/50). The law prescribes that an appeal is impermissible if the person who has filed it has no legal interest.

The requirement for a legal interest stands throughout the civil proceedings and is applicable to every party – arg. after art. 2. 4 of the Law on Contested Procedure. The Law stipulates that a party must have a legal interest in the claim and other procedural actions that may be taken in the proceedings.

In this appellate procedure these appellants have no legal interest, therefore their appeals are impermissible.

Regarding the appeals of Sh. Sh. and M. H.:

The appeals are admissible and permissible but there is a procedural impediment for their adjudication.

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 ownership of private immovable 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 context of the established facts the statement of the claimant that the possession of the property was lost in relation to the armed conflict of 1998/1999 remains completely unjustified. It is obvious from the documents within the file as described above that first of all the cadastral situation of the parcel in question is still not clear. It is not clear when and how parcel 1893/2 was formed.

It is not clear how in 1986 Mr P. has sold parcel 1893 identified as being of 30 ar and then why this same parcel in 1998 is described in the possession list of P. as being of more than 1 ha – 1 ha 32 ar 5 m^2. Same applies to all those purchases of parts of either parcel 1893 or 1893/2. What is obvious from the contract from 1986 – of Sh. (Sh.) is that long before the war the owner M. P. wanted to sell his property and he did (or at least partially), regardless of the lack of clear identification of what was sold. Similar considerations apply to the purchases, made by Sh. Sh. and M. H. in 1998, of 6 ar 63 m^2 and 10 ar. Again, there is no identification as to what exactly was sold – here apply the arguments as to what a parcel is and how it is identified as laid out above regarding the decision of the Municipal Court of Pristina from 2005.

Regardless of what the legal effect of these purchases was the relevant fact in the current case is that the late husband of the claimant has started to alienate his property even before the armed conflict and it cannot be claimed that the loss of possession was related to the war.

In addition, in case the above mentioned alienations of parts of parcel 1893 or 1893/2 *(30 ar in 1986 and 16 ar 63 m^2 in 1998 - the total of 10 ar and 6 ar. 63 sq m^2., out of 73 ar 75 m^2, which is the total surface of parcel 1893/2)*, have produced a transfer of property rights (in ideal parts over parcel 1893 or 1893/2) a co-ownership has been established between M. P. on one side and the buyers on the other. After the death of P. this co-ownership was transferred within the patrimonium of his heirs – i.e. his wife (the claimant) and their children and the question regarding the administration and/or liquidation of this co-ownership should be decided upon by the relevant regular civil court of Kosovo.

In this respect the Court should not elaborate on the merits of those two appeals, respectively the merits of the appealed decision in this part.

Cost 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 (Sections 10.21 and 10.15 of AD 2008/2), which cannot be more than € 30.

These court fees are to be borne by the claimant/appellee, who has filed an impermissible claim outside the jurisdiction of the KPA. 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 Law 03/L-079, this judgment is final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Anne Kerber, EULEX Presiding Judge ***Sylejman Nuredini, Judge***

Elka Filcheva-Ermenkova, EULEX Judge ***Urs Nufer, EULEX Registrar***