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-53/12 **Prishtina, 23 May 2013**

In the proceedings of:

M.D.S

Claimant/Appellant

vs.

1. **Xh.M**

2. **A.Sh.K**

Respondents/Appellees

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 decisions of the Kosovo Property Claims Commission KPCC/D/R/131/2011 (case file registered at the KPA under No. 53997), dated 26 October 2011, and KPCC/D/A/128/2011 (case file registered at the KPA under No. 53998), dated 26 October 2011, after deliberation held on 23 May 2013, issues the following:

JUDGMENT

1- **The appeals filed by M.D.S on 23 March 2012 and registered under Nos. GSK-KPA-A-53/12 and GSK-KPA-A-54/12 are joined into one single case under No. GSK-KPA-A-53/11.**
2- **The appeals filed by M.D.S on 23 March 2012 are rejected as ungrounded.**
3- **The decisions KPCC/D/R/131/2011 (case file registered at the KPA under number KPA 53997), dated 26 October 2011, and KPCC/D/A/128/2011 (case file registered at the KPA under number KPA53998), dated 26 October 2011, are confirmed.**
4- **The appellant has to pay the costs of the proceedings in the amount of € 60 (sixty) within 90 (ninety) days from the day this judgment is delivered or otherwise through compulsory execution.**

Procedural and factual background:

On 8 November 2007, M.D.S filed 2 claims with the Kosovo Property Agency (KPA), seeking confirmation of his property right over several parcels and re-possession. He explained that these cadastral parcels were registered in the name of his mother L.S and that they were usurped.

To support his claim, he provided the KPA with the following documents:

- The reply of the property right holder L.S against the respondent dated 20 September 2011;
- Statement of L.S in the capacity of property right holder dated 30 December 2009 certified in the Municipal Court in Pejë/Peć Vr.nr.9680, which refers to the sale of immovable property registered in possession list no. 36 of the Cadastral Municipality Shaptej/Šaptej, Deçan/Decane Municipality to A.Sh.K, with full consciousness and without force, deception or threat, and with the approval of her family;
- Identification card, issued on 14 February 1985,by the Municipality of Gjakovë/Đakovica Municipality;
- Possession List no. 36, issued on 14 May 2005 by the Republic of Serbia, which confirms that L.S is the owner of the claimed parcels in the Municipality of Deçan/Decane, Cadastral Municipality Shaptej/Šaptej , as follows:

KPA appeal and case file number	Data relating to the claimed parcel
GSK-KPA-A-53/12	Parcel no. 43, at the place called "okuqnica", meadow class 4 with

(KPA53997)	a surface area of 2. 84. 95 ha, house with a surface area of 0. 01. 86 ha, and yard with a surface area of 0. 05. 00 ha
GSK-KPA-A-54/12 (KPA53998)	Parcel no. 45, at the place called "Parcela", a fruit garden class 2, with a surface area of 0. 22. 40 ha
GSK-KPA-A-54/12 (KPA53998)	Parcel no. 46, at the place called "Parcela", a field class 3, with a surface area of 1. 49. 31 ha
GSK-KPA-A-54/12 (KPA53998)	Parcel no. 47, at the place called "Parcela", a forest class 2, with a surface area of 0. 79. 97 ha
GSK-KPA-A-54/12 (KPA53998)	Parcel no. 48, at the place called "Parcela", yard class 4, with a surface area of 0. 19. 29 ha
GSK-KPA-A-54/12 (KPA53998)	Parcel no. 49, at the place called "Parcela", meadow class 4, with a surface area of 0. 74. 76 ha
GSK-KPA-A-54/12 (KPA53998)	Parcel no. 50, at the place called "Parcela", a forest class 2, with a surface area of 1. 10. 43 ha

The claimed property according to the registered claim KPA53997 concerning the case file GSK-KPA- A-53/12 was notified on 30 January 2008 and on 19 February 2009, whereas the claim KPA53998 according to the case file GSK-KPA-A-53/12 was notified on 04 March 2009 and 10 July 2009. The KPA notification team went to the places where the claimed parcels were allegedly situated and put up signs indicating that the properties were subject of a dispute and that the interested parties could file their responses within 30 days.

The respondent Xh.M, on 24 December 2008, in his response asserted that the claimed properties had initially been owned by his family until 1954. In 1954, D.S – the husband of the property rights holder – took these properties and used them until 1998, and he – Xh.M – has been using them since then. He expressed his willingness to purchase these properties from the claimant. In order to support these allegations, he presented the following evidence:

- The deed in the original language and the translation;
- Statements of A.Z and S.A dated 15 June 1923 by which it is ascertained the reception of the sale price for the parcels located in Dubrava.

In addition, in the capacity of the respondent, on 04 March 2009, appeared A.Sh.K alleging that he had bought the properties that are subject of the claims and presented the following evidence:

- Authorisation certified in Peja Municipal Court Vr.nr.9679/09 dated 30 December 2009 by which Q.M in Peja is authorised by L.S that on her behalf sell, hand over, and register in the competent body the cadastral parcels 43, 44,45,46,47,48,49, and 50, registered in possession list 36 of Shaptejë Cadastral Zone, Deçan municipality, to the purchaser A.Sh.K;
- Contract on sale and purchase of immovable properties certified in Municipal Court in Deçan Vr.nr 2996/09 dated 31 December 2009;
- Pre-contract with a statement of the property rights holder L.S certified in Peja Municipal Court vr.nr. 9880/09 dated 30 December 2009, which confirms that she sold to A.Sh.K the immovable property from the Possession List 36 Shaptej Cadastral Zone, Deçan Municipality for the price of 175,000.00 Euros to be paid in installments; these immovable properties were sold with free will, without force or deceit;
- Response given to the property rights holder addressed to the KPA dated 16 September 2011, which asserts that there is a dispute between her and A.Sh.K because he did not act according to the agreement they had. Whereas, the assertions of Xh.M are ungrounded and are intended to usurp her immovable property.;
- Certificate of immovable property rights UL-70505082-00036 dated 19 July 2010 of Cadastral Zone Shaptejë, Deçanit municipality, which was positively verified whereas other evidence need not be verified.

Kosovo Property Claims Commission (KPCC) in relation to the claimed properties, with its decisions KPCC/D/A/128/2011, and KPCC/D/R/131/2011 dated 26 October 2011, dismissed the claimant's claim due to lack of jurisdiction with the reasoning that they confirmed the sale of properties that are subject of the claims, but the contract was not fulfilled in entirety because only a part of the contracted price was paid. Therefore, for the above reasons, the commission considered that such claims refer to the contractual dispute so the claimant, respectively the property right holder, were in legal and factual situation to exercise the property rights by selling those immovable properties; thus, it cannot be said that the loss of those property rights was related to the circumstances directly or resulting from the armed conflict 1998/1999.

The decision was served to the claimant – appellant on 27 February 2012; whereas the decision was served to the respondent Agron Kelmendi on 01 February 2012. This decision was served to Xh.M on 02 February 2012. On 16 May 2012, A.Sh.K and Xh.M received the appellant's appeals but did not file responses to the appeals.

On 23 March 2012, the claimant/appellant filed the appeals with the Supreme Court challenging the decisions of KPCC due to erroneous and incomplete determination of the factual situation as well as wrongful application of the substantive law, and motioned that the Commission's decisions be amended and his property rights be acknowledged over the parcels that are subject of the claims. Further, he states that his mother in the capacity of the property rights holder did not sign the authorisation certified by the Municipal Court in Peja V.nr.9679/09 dated 30.12.2009 and that the authorisation is forged. Since he did not sell the property that is subject of the claims, the loss is directly related to or results from the armed conflict. Therefore, he petitioned the Supreme Court to return to him the possession of the properties according to Section 3 of UNMIK Regulation 2006/50 as amended by Law no. 03/L-079.

The Supreme Court has joined the claims.

Legal reasoning:

Joining of appeals:

Section 13.4 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, provides that the Supreme Court can decide on joined or merged appeals, when the joining or merger of claims has been decided by the Commission pursuant to Section 11.3 (a) of this Regulation. This section allows the Commission to take into consideration the joining or merger of claims in order to review and render decisions when there are common legal and evidentiary issues.

The provisions of the Law on Contested Procedure that are applicable in the proceeding of the Appellate Panel before the Supreme Court pursuant to Section 12.2 of UNMIK Regulation 2006/50, as amended by Law No. 03/L-079, as well as provision of Article 408.1 as read with Article 193 of the Law No. 03/L006 on Contested Procedure, provide the possibility of joining of all claims through a ruling if that would ensure court-effectiveness and efficiency of the case.

In the text of appeals filed by the appellant, the Supreme Court observes that apart from a different case number for which the respective appeal is filed, the facts, the legal grounds and the evidentiary issues are exactly the same in those 2 (two) cases. Only the parcels, object of the property right which is alleged in each claim, are different. The appeals are based on the same explanatory statement and on the same documentation. Moreover, the KPCC's legal reasoning for the claims is the same one.

The appeals registered under GSK-KPA-A-53/12 and 54/12, are joined in one single case under GSK-KPA-A-53/12.

Admissibility of the appeals:

The Supreme Court of Kosovo reviewed the appeal judgment pursuant to the provisions of Article 194 of LCP, and after evaluating the appeals statements found that:

The appeals are admissible because there were filed within the legal time-limit according to Section 12.1 of UNMIK Regulation no. 2006/50 as amended by Law no. 03/L-079, which stipulates that a party may file an appeal against a decision of the Commission within thirty (30) days of the notification to the parties about the decision. This is because the decision was served to the appellant on 27 February 2012 and he filed an appeal on 23 March 2012. However, the appeals are not founded.

The Supreme Court of Kosovo considers the decision of the KPCC to dismiss the claim as correct but for different reasons. As the property right holder undisputedly had lost possession of the parcel by occupation by the first respondent and this was directly related to the war, the claim is in the jurisdiction of the KPCC/KPA Appeals Panel. However it has been established that in 2009 the claimant's mother as the property right holder sold the properties to the second respondent. She entered into a pre-contract with the second respondent and even accepted a payment of € 30.000. These facts are not disputed. The claimant solely alleges that the second respondent has not yet fulfilled his obligations originating from the contract, i.e. he has not yet paid the full price of the property. He does not dispute that the property right holder was willing to dispose of her ownership right. In cases like these the Court finds no legal interest to pursue a claim before the KPCC/KPA Appeals Panel. and the claim had to be dismissed (as it was done by the first instance but for different reasons). According to art. 2.4 of the Law on Contested Procedure a party must have a legal interest in a claim and other legal procedure. In this particular case the claimant has legal interest in pursuing a monetary claim for the full payment of the price of the purchased properties or to have the contract/pre-contract annulled while giving back the received money. Claims like these, however, may not be subject of the current proceedings.

For factual clarity it may be further explained that through the response given to the respondent addressed to KPA 20 September 2011, L.S confirmed the fact that the Statement certified in Peja/Peć Municipal Court Vr.nr.9680/09 dated 30 December 2009 is genuine, asserting that at her own will and without any threat or force, and with the approval of her family members she sold to A.Sh.K the immovable property registered in the Possession List no.36, with a total surface area of 2.91,81 ha, located in cadastral zone Shaptejë, Deçan municipality, at the price of 175.000 euro, to be paid in three installments. The first installment of 30.000 euro

to be paid immediately, the second installment of 100.000 euro to be paid on 25 November 2010, whereas the third installment on 20 December 2010 in the sum of 45.000.euro. Only the first installment was paid. Through this statement it is also confirmed that these agricultural properties were handed over to the possession of the purchaser, who was entitled to certify the sale and purchase contract at the competent court and register such properties in the cadastre under his name.

L.S herself, as property right holder, upon submitting at the Supreme Court her response to the respondent addressed to KPA dated 20 September 2011 and the Statement certified in Peja Municipal Court Vr.nr.9680/09 dated 30 December 2011, admits that these parcels were sold to the respondent/appellant on 30 December 2009, but that the purchaser paid only the first installment in the amount of 30.000 euros, which is a partial price of the sale of such immovable properties. Therefore, there is no evidence that the parcels were lost and property right could not be exercised by reason of armed conflict. On the contrary, there is a dispute about this immovable property between her and A.Sh.K because he did not act in accordance with the agreement they had. KPCC and the Supreme Court are restricted exclusively to the ownership confirmation claims and return of possession by reason of circumstances related directly to or resulting from the armed conflict in Kosovo 1998/1999.

In addition, the statement of L.S certified in the Peja Municipal Court Vr.nr.9680/09 dated 30 December 2011 and the certified authorisation in the same court are expressions of her autonomy of will, until they are proven of absolute or relative nullity with legally valid evidence and by the competent court. Thus, unless proven otherwise, the evidence is legally valid and produce inter partes legal effect between the contractual parties.

Therefore, in this legal-contested matter if the claimant has legal interest, as already mentioned above, the claimant has the right and legal possibility to seek judicial protection before competent courts concerning the fulfilment or termination of the authorisation, statement certified in the municipal court in Peja Vr.nr.9679/09 and 9680/09 dated 30 December 2009, and the contract on sale of immovable properties certified by the Municipal Court in Deçan Vr.nr2996/09 dated 31 December 2009, and consequently return of the immovable properties that are subject of the claims.

Therefore, based on the above, according to the provision of Section 13.6 of UNMIK Regulation 2006/50 as amended by the Law 03/L-079, it has been decided as in the enacting clause of this judgment.

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 (sections 10.21, 10.15 and 10.1 of AD 2008/2) taking into account that the value of the property in question can be reasonably estimated to be over € 90.000: € 500 (€ 50 + 0.5% of 90.000, but 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 or domicile abroad is obliged to pay a fee, the deadline for the payment may not be less than 30 days and no longer than 90 days. The Supreme Court decided here that the appellant has to pay the cost of proceedings within 30 days from the day the judgment was served to him/her. 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.

This judgment does not preclude the claimant's right to refer the claims to competent courts outside the jurisdiction foreseen by the provisions of Section 3.1 of UNMIK Regulation 2006/50 as amended by Law 03/L-079.

Anne Kerber, EULEX Presiding Judge

Sylejman Nuredini, Judge

Elka Filcheva-Ermenkova, EULEX Judge

Urs Nufer, EULEX Registrar