

**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-055/12**

**Prishtinë/Priština, 25 June 2013**

In the proceedings of:

**B. M.S.**

*Claimant/ Appellant*

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/128/2011 (case file registered at the KPA under No. KPA06328), dated 26 October 2011, after deliberation held on 25 June 2013, issues the following

## JUDGMENT

- 1- The appeal of B. M.S. is accepted as founded.
- 2- The decision of the Kosovo Property Claims Commission KPCC/D/A/128/2011 of 26 October 2011 as far as it regards the case registered at the KPA under No. KPA06328 is modified as follows:

The appellant has established that he is the owner of parcel No. 662, located in the municipality of Gjakovë/Djakova, cadastral zone Hereç/Ereç, with a surface of 3 ha, 79 ar and 88 m<sup>2</sup>.

The appellant is entitled to possession of the said property.

Any person occupying the property is ordered to vacate the property within 30 (thirty) days of the delivery of this judgment.

Should any person occupying the property fail to comply with this order to vacate the claimed property within the time period stated, they shall be evicted from the property.

### **Procedural and factual background:**

On 10 January 2007, B. M. S. filed a claim with the Kosovo Property Agency (KPA), seeking to be recognized as the owner of a property located in Hereç/Ereç in Gjakovë/Djakovica, parcel No. 662, a 5<sup>th</sup> class field with a surface of 3 h 79 ar 88 m<sup>2</sup>, and repossession. He explained that he had acquired the land by inheritance, had lost it on 13 June 1999 and that the loss was the result of the circumstances of 1998/1999 in Kosovo. He stated that the family B. occupied the parcel. The case was registered at the KPA under No. KPA06328.

To support his claim, the claimant provided the KPA amongst others with Possession List No. 161, issued by the Municipality of Gjakovë/Djakovica, Cadastral Zone Hereç/Ereç, on 25 April 2005 (UNMIK), showing that parcel No. 662 was registered under the name of B. S. The Possession List could be verified.

On 7 June 2010, the KPA notification team went to the place where the claimed parcel allegedly was located and put up a sign indicating that the property was subject to a claim and that interested parties should have filed their response within 30 days. The property (a meadow) was found not occupied. The notification team contacted the family B. who stated that they did not use the property. On 9 June 2010, the notification was checked based on orthophoto and GPS coordinates and was found to be correct.

On 5 April 2010, a KPA officer contacted the claimant (apparently by phone) in regard of the parallel case GSK-KPA-A-150/11 (KPA06330). In this case the occupant had stated that with a contract of 26 December 1997 the claimant had sold a parcel to him. The claimant confirmed that he had received 45.000 DM for this parcel, but that the remaining 40.000 DM had not been paid to him. The claimant furthermore confirmed that he moved to Kruševac in 1997 because his son had died and that from this time on he had not used the property.

On 26 October 2011, the Kosovo Property Claims Commission (KPCC) with its decision KPCC/D/A/128/2011 dismissed the claim as it did not fall within the jurisdiction of the KPCC. As the claimant had moved to Kruševac already in 1997, the KPCC concluded that the claimant had lost possession already in 1997. Therefore, the loss of possession did not involve circumstances directly related to or resulting from the conflict of 1998/1999.

The decision was served on the claimant on 8 March 2012. On 4 April 2012, the claimant (henceforth: the appellant) filed an appeal with the Supreme Court, challenging the KPCC's decision on the grounds of serious violation of the applicable material and procedural law and erroneous and incomplete determination of the facts.

The appellant declared that he had never moved to Kruševac but had stayed there only temporarily in 1998, due to the serious illness of his brother. After his brother's death he had come back to Gjakovë/Đakovica where he lived until June 1999 when he left because of the insecure situation in Kosovo. From June 1999 he lived in Leposaviq/Leposavić. To support his allegations he submitted copies of his ID-card, a request for pension and a copy of a bank credit card.

The appellant requests that the appeal shall be resolved in his favour, that the decision of the KPCC be annulled and his property right be recognized.

**Legal reasoning:**

The appeal is admissible. It has been filed within the period of 30 days prescribed in Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079.

The appeal also is founded.

1. The Court finds that the case is within the jurisdiction of the Court.
  - a. The Court assumes that the loss of the property is directly related to the war. The Court notes that the appellant informed the KPA that he had moved to Kruševac already in 1997. However, the Court found the records of a Court settlement of 21 January 1998 compiled before the Municipal Court of Kruševac. In these records the address of the appellant is noted as Gjakova/Djakovica, even the street and the house number are given. In the decision of the Republic Geodetic Directorate of Gjakova/Djakovica, BR.952-01-1/98-53-C of 17 February 1998, the same address is noted for the appellant. These facts sustain the allegation of the claimant that he permanently left for Kruševac only in 1999 because of the conflict. Furthermore, in the already mentioned court settlement, the address of the claimant's brother is given as an address in Kruševac. This also indicates the truth of the statement of the appellant that he went to Kruševac temporarily in 1998 because of the illness of his brother. The Court wants to add that this does not contradict the information the appellant gave to the KPA as it cannot be excluded that he first temporarily went to Kruševac in 1997 and then again in 1998.
  - b. The Court also has no doubt that the property is private property. According to decision BR.952-01-1/98-53-C of 17 February 1998 of the Republic Geodetic Directorate of Gjakova/Djakovica, the property had to be registered as private property of B.(M.) S., the appellant.
2. The appellant also has proven his ownership right.

The KPA not only found UNMIK Possession List No. 161, issued on 14 April 2011 for the Cadastral Zone of Hereç/Ereç in the Municipality of Gjakovë/Djakovica, which shows that parcel No. 662 is registered in the name of B. S.. The KPA also found the Certificate for the Immovable Property Rights UL-70705030-00161 issued by the Kosovo Cadastral Agency on 2013 for the cadastral zone of

Hereç/Ereç. The certificate also shows that B. S. is the owner/possessor of parcel No. 662. According to Art. 124 of Law No. 03/L-154 on Property and other Real Rights, if a right – here the ownership right of the appellant to the parcel – has been registered in the immovable property rights register for the benefit of a person, it is presumed that such person is entitled to the right so registered.

Accordingly, the decision of the KPCC had to be amended, the ownership of the appellant confirmed and repossession had to be ordered.

**Costs of the proceedings:**

As the appellant wins the case, he has to pay no costs.

**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**

**Elka Filcheva-Ermenkova, EULEX Judge**

**Sylejman Nuredini, Judge**

**Urs Nufer, EULEX Registrar**