

**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-140/13

Prishtinë/Priština,

26 March 2015

In the proceedings of:

E B

V /V

Claimant/Appellant

Vs.

Respondent/Appellee

N/A

The KPA Appeals Panel of the Supreme Court of Kosovo, composed of judges: Sylejman Nuredini Presiding Judge, Willem Brouwer and Esma Erterzi, members, on the appeal against the decision of the Kosovo Property Claims Commission KPPC/D/R/175/2013 (case file registered at the KPA under the number KPA00490) dated 22 December 2012, after deliberation held on 26 March 2015, issues the following:

JUDGMENT

1. The appeal of E B filed against the decision of Kosovo Property Claims Commission KPPC/D/C/175/2012, (case file registered at the KPA under the number KPA00490) dated 22 December 2012, is rejected as ungrounded.
2. The decision of Kosovo Property Claims Commission KPPC/D/C/175/2012, (case file registered at the KPA under the number KPA00490) dated 22 December 2012, is confirmed

Procedural and factual background:

1. On 14 March 2007, E B filed a claim with Kosovo Property Agency for recognition of his right over a private property, claiming that he is property right holder and seeking repossession of these immovable properties. The claim was registered with the Kosovo Property Agency under KPA00490 and it refers to the cadastral parcel 3001/14, a yard at the place called “livadhet e mëdha”, with a total surface of 00.05.79 ha. This immovable property is registered under the name of E B according to the Possession List No. 4302 issued by the Department of Cadastre, Geodesy and Property of the Municipality of Vushtrri/Vučitrn on 18 March 2008.
2. He alleged that he cannot exercise the property rights over these immovable properties due to the circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.

To support his claim, he submitted a wide range of evidence:

- Possession List No.06-01/876, dated 16 May 2002, issued by the Municipal Department of Geodesy in Vushtrri/Vučitrn, which establishes that the cadastral parcel 3001/14 is registered under the name of E B from Vushtrri/Vučitrn and that this cadastral parcels consists of a house with as surface of 00.01.40 ha and a yard with a surface of 00.04.39 ha, in the cadastral zone of Vushtrri/Vučitrn.
- Copy of Plan issued by the Municipal Assembly of Vushtrri/Vučitrn on 16.05.2002. This Copy of Plan also establishes that E B is registered in the capacity of the holder of the claimed immovable properties.
- Certificate of the Immovable Property Rights UL-70202016-04302, dated 28.7.2008, which establishes that the cadastral parcel 3001/15 is registered under the name of E B ,

- Through the Judgment Ac.nr.132/95 issued by the District Court of Mitrovicë/Mitrovica on 06 April 1995, the appeal of E B was rejected as ungrounded and the Judgment C.nr.110/94 dated 05 December 1994 issued by the Municipal Court of Vushtrri/Vučitrn was confirmed. Subject of review and assessment both in the first and the second instance judgments was the immovable property which is subject of the claim filed by the Claimant E B.

The Claimant submitted a wide range of other evidence referring to the subject to this claim and which entirely and exactly refer to the evidence indicated in the previous paragraph.

3. In 2007, 2010 and 2011, the Notification Team went to the place where the claimed properties were allegedly located and put a relevant notification sign on this cadastral parcel.
4. According to the Verification Report of the KPA Executive Secretariat, all the underlined documents have been positively verified on 25 March, 04 April, 8 August and 25 September 2008.
5. No Respondent approached the KPA to contest or claim any right over these immovable properties.
6. According to the case processing Report of the KPA Executive Secretariat, dated 04 September 2012, it is found that according to the evidence of the Cadastral Office in Vushtrri/Vučitrn, the cadastral parcel 3001/14 was changed into the cadastral parcel 3001/15. The Claimant also agreed to these changes, stating that the proceedings can be conducted according to this changed cadastral parcel.
7. Kosovo Property Claims Commission (KPCC), through its cover decision KPCC/D/R175/2012 dated 22.10.2012, dismissed the claim of E B on grounds that the Kosovo Property Claims Commission has no jurisdiction. In the reasoning of this appealed decision under par. 21, it is stipulated that “The Claimant failed to demonstrate that his claim includes the circumstances directly related to or resulting from the conflict in 1998/1999”. This is because the Claimant did not present any legally valid evidence and did not show any fact that his claim relates to the conflict.
8. The decision was served on the Claimant on 15 April 2013 and he filed an appeal on 30 April 2013.

Allegation of the Appellant

9. The Appellant challenges the appealed decision because of misapplication of the substantive and procedural law and erroneous and incomplete determination of factual situation. He alleges in his appeal that the contest related to the claimed property arose in 1977 between him and the other family members, but he lost a part of this property on 19 June 1999. He therefore proposes to have the decision of the Kosovo Property Agency rejected and have his property right over the claimed

property upheld and H Q and the other family members are evicted from the first floor and the part of the rooftop of this property.

Legal reasoning

Admissibility of the appeals

10. Pursuant to Section 12.1 of UNMIK Regulation No. 2006/50 as amended by Law no.03/L-079, a party may file an appeal against a decision of the Commission within 30 days from the notification of parties of this decision.
11. In the case at stake, the KPCC decision was served on the appellant on 15 April 2013 and he filed an appeal on 30 April 2013, which is within the period of 30 days from the receipt of notification on the decision of the Commission.
12. The appeal is admissible as it was filed within the prescribed period of time, but it is ungrounded.

Merits

The Supreme Court of Kosovo, following the review and assessment of the case files and allegations by the appellant, pursuant to Article 194 of LCP, concluded that his appeal is ungrounded.

13. The Supreme Court finds that the appealed decision is correct and lawful and that it is not followed by essential violations of provisions of contested procedure under Article 182 para 1 and 2 of LCP. KPCC decided correctly in the appealed decision when it dismissed the claim of the Claimant because of the absence of jurisdiction. This is because based on the evidence submitted and the facts established the disagreements between the Appellant and the other family members regarding the claimed property arose back in 1977 concerning the right of use of the first floor and the roof of the house located in cadastral parcel no. 3001/14 at the place called “livadhet e mëdha”, a house of 0.01,41 ha and a yard of 0.04.39 ha registered under the Possession List No. 4302 of the Municipality of Vushtrri/Vučitrn.
14. In the light of foregoing and based on the evidentiary proceedings and the facts established thereof, it can be concluded without any doubts that the provision of Section 3.1 of UNMIK Regulation 2006/50 as amended by Law 03/L-079 was correctly applied when the claim of the Claimant was dismissed in absence of jurisdiction. This legal provision provides that the Supreme Court has jurisdiction over the cases when the property right cannot be exercised due to the due to the circumstances directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999.

15. In the current case, according to the evidentiary proceedings and also according to the allegation of the Appellant the disagreement regarding the claimed property derive from 1977 and that it does not refer to the armed conflict in the period 1998/1999. Thus, the Appellant failed to show and support the appellate allegations that through the appealed decision it was decided incorrectly regarding the lack of jurisdiction of KPCC.
16. In the light of foregoing and pursuant to provision of Section 13 para 3 subpara (c) UNMIK Regulation 2006/50 as amended by Law 03/L-079, the appeal is rejected as ungrounded as it is decided as in the enacting clause of this judgment.
17. 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.

Sylejman Nuredini, Presiding Judge,

Willem Brouwer, EULEX Judge

Esma Erterzi, EULEX Judge

Urs Nufer, EULEX Registrar