

**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-253/13

Prishtina,
6 May 2015

In the proceedings of:

I. I.

Drenas

Appellant/Claimant

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Esma Erterzi and Rolandus Bruin, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/A/196/2013 (case file registered at the KPA under No. KPA00049), dated 18 April 2013, after deliberation held on 6 May 2015, issues the following

JUDGMENT

1. The appeal of I.I. is rejected as ungrounded.
2. The decision of the Kosovo Property Claims Commission KPCC/D/A/196/2013 (case file registered at the KPA under no. KPA00049), dated 18 April 2013, is confirmed.

Procedural and factual background:

1. On 5 May 2006, the appellant, previously the claimant I.I., filed a claim at the Kosovo Property Agency (KPA), seeking confirmation of his ownership right, repossession and compensation for the use of parcel no. 6/12, with a surface area of 04.00.00 ha, Possession List no. 190, Cadastral Zone Komoran, Drenas Municipality (hereinafter: the claimed property).
2. He alleged that the claimed property was taken from him in discriminatory manner in 1961; therefore, he sought its restitution based on the Ruling no. 1230.
3. To support his allegations, the appellant among others provided the following documents:
 - Decision no. 03-1230 dated 10 December 1963, issued by the Provincial Secretariat for Finances – Branch of National Property in Prishtina. According to this decision, the other decision no. 1230 dated 30 November 1963 by the Commission for Resolution of Property Relations that have arisen as a consequence of unlawful usurpation of the socially owned property of Drenas Municipality, was annulled;
 - Decision R.no. 860/75 dated 10 February 1976, issued by the Municipal Court in Prishtina. According to this decision, it is confirmed that the appellant has the right to live in the apartment – the studio apartment no. 2 in Drenas;
 - Decision C.no.79/76 dated 8 April 1976, issued by the Municipal Court in Prishtina. By this decision, it is confirmed that the appellant was obstructed in using the studio apartment no. 2 in Drenas;
 - Copy of plan dated 26 January 2001, issued by the Cadastral Municipality in Drenas regarding the parcel no. 754 (building);
 - Decision no. 202-787 dated 23 September 2002, issued by the Sector of Civil Registry – Directorate for Administration and Personnel of Drenas Municipality. According to this document, the appellant’s surname was corrected from I. to I;
 - Letter of the appellant dated 8 May 2007, addressed to Kosovo Property Agency (KPA). In this letter, the appellant requests from KPA transparency and effective legal decision for realization of his claim;
 - Appellant’s written statement dated 19 April 2006, addressed to Kosovo Property Agency (KPA);
 - Appellant’s written statement dated 19 April 2006, addressed to Kosovo Trust Agency (KTA);
 - Appellant’s letter dated 10 October 2008, addressed to the Directorate for Property and Housing Matters (HPD). In this letter, the appellant seeks the return of his housing and

- property right over the apartment and the associated land – construction land with a surface of 0.08.ha, alienated by Drenas Municipality in 1950;
- Possession List no. 87 (without date) regarding the parcel no. 754 and 752;
 - Written statement (without date) addressed to the Kosovo Property Agency; and
 - Appellant's ID issued on 8 August 2001.
4. On 18 December 2006, the KPA Notification Team notified the claimed property. Whereas according to the report dated 1 July 2010, it can be seen that KPA had done the re-notification of the claimed property and confirmation of notification of the claimed property, and that the claimed property (Land/Forest) was found ununsurped.
 5. Following the notification of the property and within the legal time limit of 30 days, nobody presented himself/herself as respondent or interested party before the KPA/KPCC, thus the KPA/KPCC treated the filed claim as uncontested.
 6. Based on KPA verification reports dated 6, 11 and 19 July 2007, it can be seen that the Ruling. 03-1230 was found and positively verified, whereas Possession List no. 120 which is alleged to reflect the claimed property as registered (cadastral parcel 6/12) was not found and was not positively verified. Also, the verification reports dated 9 July 2008 and 19 April 2011 ascertain that the Possession List no 120 which is alleged to reflect the claimed property as registered cadastral parcel 6/12 was negatively verified.
 7. The KPCC, with its decision KPCC/D/A/196/2013 dated 18 April 2013, dismissed the claim due to jurisdiction. The KPCC acknowledged that the case is not related to the armed conflict of 1998/1999.
 8. The decision was served on the claimant on 7 October 2013. He filed an appeal on 6 November 2013.

Allegations of the appellant:

9. The Appellant challenged that KPCC decision considering it as unconstitutional and unlawful. Further, he states that the decision was based on deceit, abuse, and misuse of official positions; therefore he requests an extraordinary review of the decision and annulment of the impermissible proceedings, and for the property to be returned to him.
10. The Appellant alleges that the claimed property was taken from him in 1961 in a discriminatory manner and that based on the Ruling no. 1230 he is entitled to restitution of the property to his personal name.

Legal reasoning:

Admissibility of the appeal:

11. The appeal is admissible. It was filed within the time limit of 30 days as stipulated by Section 12.2 of UNMIK Regulation 2006/50 amended by the Law 03/L-079 on resolution of private immovable property claims, including agricultural and commercial property (hereinafter: the Law 03/L-079).

Merits:

12. The Appeal is ungrounded.
13. Pursuant to Article 3.1 of the Law 03/L-079, the Commission has the competence to resolve claims concerning the rights that cannot be exercised due to the circumstances that are related directly to or result from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.
14. In this particular case, the possession of property was lost in 1961 (the claimant himself asserts this fact), which means that the claim is not related to the armed conflict of 1998/1999. Therefore, the Commission rightfully dismissed the claim because it is outside its jurisdiction.
15. Based on the presented reasons and pursuant to Article 13.3 (c) of the Law 03/L-079, the Court decided as in the enacting clause of this Judgment.

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.

Sylejman Nuredini, Presiding Judge

Esma Erterzi, EULEX Judge

Rolandus Bruin, EULEX Judge

Urs Nufer, EULEX Registrar