

**SUPREME COURT OF KOSOVO
GJYKATA SUPREME E KOSOVËS
VRHOVNI SUD KOSOVA**

**KOSOVO PROPERTY AGENCY (KPA) APPEALS PANEL
KOLEGJI I APELIT TË AKP-ës
ŽALBENO VEĆE KAI**

GSK-KPA-A-275/13

Prishtinë/Priština,

13 May 2015

In the proceedings of

B. H.

On behalf of the Council of the Islamic Community in Pejë/Peć

Claimant/Appellant

Represented by lawyer J. Ç.

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini, Presiding Judge, Esma Erterzi, and Willem Brouwer, 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 the number KPA00410), dated 18 April 2013, after deliberation held on 13 May 2015, issues the following

JUDGMENT

1. The appeal filed by the Council of the Islamic Community in Pejë/Peć, against the decision of the Kosovo Property Claims Commission KPCC/D/A/275/2013, dated 18 April 2013, with regard to the claim registered with KPA under No KPA00410, is rejected as unfounded.
2. The decision of the Kosovo Property Claims Commission KPCC/D/A/275/2013 dated 18 April 2013, with regard to the claim registered with KPA under No KPA00410, is confirmed.

Procedural and factual background

1. On 16 February 2007, B. H. as authorized person, on behalf of Council of Islamic Community in Pejë/Peć (henceforth: the Claimant) filed a claim with the Kosovo Property Agency (KPA), registered under case no. KPA00410, seeking for the repossession of the cadastral parcel 462/2 (the claimed property), in the street. Ramiz Sadiku, cadastral zone Pejë (zone no 71611071), in the Municipality of Pejë/Peć, which is registered as a socially owned land.
2. With the claim, he submitted the partial possession list no 2608 issued by Kosovo Cadastral Agency, the Department for Cadastre Geodesy and Property, Municipality of Pejë/Peć, issued on 28 April 2004, indicating that the claimed property is registered under the name of P.SH. KK. I Pejes. He also submitted the copy of the cadastral plan, authorization, a statement addressed to the Kosovo Property Agency and the certificate issued on 13 December 2004 by the Municipal Assembly, Directorate for Cadastre Geodesy and Property, Number 01-3/574. The documents submitted by the claimant are positively verified by the KPA
3. On 28 December 2010, the KPA notified the claimed properties by publishing it in the Notification Gazette No.10. The Gazette and the List were left with at the Municipality, Cadastral Office, Municipal Court and KPA regional office of Pejë/Peć, as well as to OSCE, UNHCR, Kosovo Privatization Agency and Ombudsperson which accepted to make them available to the interested parties as well as at the entrance and in the exit of village Pejë/Peć. The same publications were also left.

4. On 18 April 2013, the KPCC with its Decision KPCC/D/A/196/2013 dismissed the claim due to fact that the claim falls outside the mandate of the Commission as the possession of the claimed property was not lost as a result of armed conflict.
5. The KPCC decision was served on the claimant on 21 October 2013. On 20 November 2013, an appeal was filed by lawyer J. Ç. representing the claimant (henceforth: the Appellant).

Allegations of the Appellant

6. In the statement submitted to the KPA together with the claim, it is mentioned that in 1955-56, Municipal Assembly of Pejë/Peć fragmented the present parcel into smaller portions as 462/1 and 462/2 and registered the major part of 0.0007.25 ha as the socially owned property. Despite the Council of Islamic Community requested the restitution of the claimed property from Municipality of Pejë/Peć, the latter had not shown and will or readiness. The claimant asks for the return of the possession of the claimed property registered under possession list no 2608 to its owner who lost it in 1956.
7. In its appeal, the Appellant alleges that the decision of the KPCC involves a fundamental error or serious misapplication of the applicable material and procedural law. It is further argued that the decision does not contain any reason for the rejection of the claim. The Appellant requests from the Supreme Court to annul the decision of the KPCC, to recognize the ownership of the claimant or to provide material compensation for the claimed property.

Legal reasoning

Admissibility of the appeal

8. The appeal was filed within the time limit of 30 days set in Law No. 03/L-079 Article 12.1 and it is admissible. The KPA Appeals Panel has the jurisdiction to examine the appeal.

Merits of the appeal

9. According to Article 3.1 of the Law No. 03/L-079, the KPCC has the competence to resolve conflict related claims involving circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999. Thus, a Claimant is not only to provide an ownership title over a private immovable property but also to show 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.

10. From the evidences submitted before the KPCC, in particular with the statement of the Appellant submitted together with the claim, the claimed property was registered as socially owned land in 1956 which is also confirmed by the Possession List no.2608 issued by Department for Cadastre Geodesy and Property, Municipality of Pejë/Peć, issued on 28 April 2004 of the Cadastre. The Appellant also admits that the possession of the land was lost in 1956 and since then it was trying to repossess it.
11. KPCC has a limited mandate dealing with only the property claims in relation to private immovable property of which possession was lost 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. It is uncontested that the loss of the possession of the claimed property occurred in 1956, long time before the armed conflict.
12. Furthermore, the claimed property is registered in the cadastre as a socially owned property in the name of Municipality of Peja. Therefore, the appellant could not be considered to have proven the alleged ownership right over the property just before the conflict.
13. Accordingly, KPCC was correct to consider that matter was excluded from its jurisdiction. The reason for dismissing the claim is mentioned under paragraph 18 of the Decision whereas the Certified Decision for case no KPA00410 refers to paragraphs 12 and 18 of the said Decision which covers more than one claim which should be read in conjunction with the certified individual decision. Therefore, the allegation of the Appellant stating that the KPCC did not give any reasoning for the rejection of the claim does not stand.
14. The Supreme Court confirms that, based on Article 3.1 of UNMIK REG 2006/50, as amended by Law 03-L/79, the KPCC lacks jurisdiction to adjudicate the claim as the loss of possession does not derive from armed conflict circumstances. Regarding the Appellant's request for compensation for the use of the property, under the Law No 03/L-079 neither the Commission nor the KPA Appeals Panel of the Supreme Court has jurisdiction over such request. Accordingly, the Supreme Court finds that neither violation of substantive law or procedural law nor an erroneous or incomplete determination of the facts has been made. The Supreme Court finds the appeal as unfounded.
15. In the light of foregoing, pursuant to Section 13.3 under (c) of the Law 03/L-079, it was decided as in the enacting clause of this judgment. This judgement is without prejudice of the right of the Claimant to pursue its alleged right before the competent court, if he considers it necessary.

Legal Advice

16. Pursuant to Section 13.6 of UNMIK Regulation 2006/50 as amended by Law 03/L-079, this judgment is final and cannot be challenged through ordinary or extraordinary remedies.

Sylejman Nuredini, Presiding Judge

Esmā Erterzi, EULEX Judge

Willem Brouwer, EULEX Judge

Urs Nufer, EULEX Registrar