

**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-107/14**

**Prishtinë/Priština,  
19 May 2015**

In the proceedings of

**M.I.**

"Knezevacka" 158, entrance V, no 14

Niš

Serbia

***Appellant***

**vs.**

**Municipal Assembly**

**Gj/D**

***Appellee***

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/212/2013 (case file registered at the KPA under the number KPA06852 dated 21 August 2013 after deliberation held on 19 May 2015, issues the following

## **JUDGMENT**

1. **The appeal of M.I. against the decision of the Kosovo Property Claims Commission KPCC/D/A/212/2013 dated 21 August 2013, with regard to the claim registered with KPA under No. 06852 is rejected as unfounded.**
2. **The decision of the Kosovo Property Claims Commission KPCC/D/A/212/2013 dated 21 August 2013, with regard to the claim registered with KPA under No. 06852 is confirmed.**

### **Procedural and factual background**

1. On 12 March 2007 M.I. (henceforth: the Claimant) filed a claim with the Kosovo Property Agency (KPA), seeking confirmation of the ownership right over the parcel no 4502/1 with the surface 00.05.00 ha located in the place Orize 2, Gjakovë/Đakovica (henceforth: the claimed property)
2. In the claim it is stated that the claimed property was lost due to circumstances related to the armed conflict that occurred in Kosovo in 1998/99, indicating 14 June 1999 as the date of loss.
3. With the claim, the Claimant submitted following documents:
  - The Decision on allocation of the land for construction No.271/87 dated **6 May 1999** issued by Municipal Assembly of Gj/D. According to the Decision, the Municipal Assembly of Gj/D allocated the parcel no 4502/1 with the surface 00.05.00 ha situated in street "Orize 2" bb to M.I. .
  - The Contract on Lease concluded between Claimant as a lessee and the Public Housing Enterprise of Gj/D. The Contract was for permanent use of the parcel no 4502/1 and without compensation. The basis of the Contract was the Allocation Decision No.271/87 dated on 06 May 1999. The Contract does not contain a reference number nor the date on which it was concluded.
  - The Statement from the Claimant dated on 7 April 2009 in which the Claimant states that he is owner of the claimed property that was allocated to him during the conflict and due to this he was unable to register it on his name.
  - Certificate for the Immovable Property Rights UL-70705028-00856 issued by Kosovo Cadastral Agency, Municipal Cadastral Office of Gj/D on 27 December 2011 that reflects

the claimed property; parcel no 4502/1 with the total surface 00.32.80 ha in the name of Municipal Assembly of Gj/D.

- Copy of a Plan issued by Directory for Cadastre of the Municipal Assembly of Gj/D. The claimed property is listed on the name of the Municipal Assembly of Gj/D
  - Power of Attorney No.6818/07 dated on 31 May 2007, certified before the Municipal Court of Niš/Nish based on which the Claimant authorized H.S. to represent him before the KPA and other relevant institutions regarding the claimed property.
4. On 25 April 2013, the KPA notified the claimed property by publishing it in the Notification Gazette No.11. The Gazette was left with the village leader who accepted to make them available to the interested parties as well as at the entrance and in the exit of Gj/D. The same publications were also left at the Municipality-Public Lawyer, Cadastral Office, Municipal Court, KPA regional office of Peja, as well as to the offices of the OSCE, UNHCR, Kosovo Privatization Agency and the Ombudsperson.
  5. On 21 January 2009, A.R. acting on behalf of Municipal Assembly of Gj/D (henceforth: the Respondent), participated in proceedings before the KPA, by contesting the Claimant's allegations.
  6. In support of his allegation the Respondent submitted:
    - The Possession List no.856 issued by Kosovo Cadastral Agency, Department for Cadastre Geodesy and Property of Gj/D on 29 December 2008 showing that the parcel no 4502/1, with the culture pasture of the 2<sup>th</sup> class and with the surface 00.32.80 ha situated in place called "Nakarade" is registered in the name of Municipal Assembly of Gj/D.
    - Copy of Plan dated 29 December 2008 listed the property in the name of Municipal Assembly of Gj/D
    - The Statement of 6 January 2009 from the Respondent's representative in which he states that the Claimant is claiming to have the property right over the parcel based on probably a forged the allocation decision issued in Serbia.
    - The Power of Attorney dated 16 January 2009 based on which the Municipal Assembly of Gj/D authorized A.R. to represent its interest in KPA regarding the object of the claim.
  7. According to the KPA verification report, of 11 November 2008, the Decision on Allocation of the property No. 271/87 dated 6 May 1999 and the Contract on Lease dated 6 May 1999 were negatively verified as they were not found on the competent institutions whilst the Certificate for Immovable Property Rights was positively verified and the property is registered in the name of the Municipal Assembly of Gj/D.

8. On 21 August 2013, the KPCC with its Decision KPCC/D/A/212/2013 refused the claim. In paragraph 56 in the cover decision, which according to the certified decision dated 21 august 2013 applies specifically to the claim, it is stated that the documents that the Claimant had submitted, had not been verified by the Executive Secretariat as genuine. The Commission finds the Claimant has failed to establish any property right over the claimed property.
9. The KPCC decision was served on I. (henceforth: the Appellant) on 7 February 2014. On 07 March 2014 he appealed the decision to the KPA Appeals Panel of the Supreme Court. The Appeal was served on the Appellee on 28 February 2014, however, he did not respond.

#### **Allegations of the appellant**

10. Appellant alleges that the decision of the KPCC involves a fundamental error or serious violation of substantive law and that the decision rests on an erroneous or incomplete determination of the facts.
11. According to the Appellant, the challenged decision of the KPCC is unlawful and legally unsustainable because, paragraph 1 of the enacting clause, under A, concludes that the claim had been dismissed, whereas further in the text, in paragraph 57 of the decision, it is concluded that the claim had been rejected, this makes the decision unclear and incomprehensible, due to which it cannot be evaluated whether is the reason given is for a dismissal or for the rejection of the claim.
12. The Appellant alleges that the Commission erroneously established the facts based on which the correct application of the substantive law depends on. He maintains that he acquired ownership right over the claimed property in accordance with the Law on Basic Property Relations according to which he was allocated a claimed property based on a legal transaction, namely based on the Decision of the Municipal Assembly of Gj/D dated 6 May 1999 hence the Commission was obliged, ex officio, to obtain requested data, if the same questioned the credibility of the documents submitted by him, and then in a separate procedure to present the evidence and with correctly established facts, the panel should have reached a lawful decision and recognize the ownership right of the Claimant over the property in question.

#### **Allegations of the appellee**

13. The representative of the Municipality of Gj/D, the Appellee argued that the decision on allocation and the contract on lease submitted by the claimant were issued by an incompetent authority when in Kosovo was state of war and as such should not produce any legal effect.

14. In addition, the Appelle's representative stated that the claimed property does not correspond with the real situation in field. He further states that the Claimant alleges a property right over the property based on probably a forged the allocation decision issued in Serbia.

### **Legal reasoning**

#### **Admissibility of the appeal**

15. The appeal has been filed within the time limit of 30 days set in Law No. 03/L-079 Article 12.1 and is admissible.

#### **Merits of the appeal**

16. Regarding the allegation of the appellant that the KPCC decision is unclear, the KPCC has given a certified decision dated on 21 August 2013, the decision made a reference to "relevant paragraphs". A special reference is made to the paragraphs 11, 56 and 57. The Supreme Court will therefore give a short summary of the reasons why the KPCC **refused** the case.
17. 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.
18. Although from the evidence submitted before the KPCC it can be seen that the Appellant allegedly was allocated a claimed property **on 6 May 1999** (during period of the conflict) whereas he indicates 14 June 1999 as the date of loss, thus, he puts in doubt the question of the possession over the property, the KPCC and the KPA Appeals Panel of the Supreme Court consider the claim as falling under its jurisdiction since there is no evidence proving the opposite.
19. The KPCC based its decision on the fact that the KPA and the KPCC Executive Secretariat had made a negative verification in the documents, on which I. bases his claim of ownership, including the Decision on Allocation and Contract on Lease both dated 6 May 1999. The KPCC Executive Secretariat had not been able to obtain *ex officio* any evidence that supported I.'s claim. It is not because it did not try to collect evidence *ex officio* but because those documents the Claimant relied

on could not be found in the public records. The verification is negative. This means that whether those documents are authentic or not is in question. Based on this, the KPCC found that I. had failed to establish any property right over the disputed property.

20. The appeal repeats the same allegations that he made before the KPCC. No new evidence of significance has been submitted with the appeal.
21. Pursuant to Section 8.6 of the Annex III of the UNMIK/ADM/DIR/2007/5 as adopted by Law No.03/L-079 the Commission may refuse or dismiss a claim on any grounds. Claims may be refused by the Commission if the Claimant or the Property Right Holder, as the case may be, has been unable to prove their ownership or use right over the claimed property. In this regard, the Supreme Court observes that the KPCC, as to the enacting clause and the reasoning, used different terminology related to the outcome of the proceedings as it regards to the claim. Thus the appellant's allegation on this point stands; however, this does not affect the eventual result achieved. The fact that the documents submitted by the Claimant cannot be found in the records of those institutions where they are supposed to would lead to the rejection (refusal) of the claim on the merits. The outcome and the reasoning of the decision challenged are clear and comprehensible.
22. Furthermore, the property is registered in the name of Municipal Assembly of Gj/D, the Respondent. The appellant could not prove his alleged ownership right or the possession of the property before the conflict. Therefore, the claim had to be refused by the KPCC, as it did so.
23. The Supreme Court finds that the KPCC has made a correct decision, based on a thorough and correct procedure. Accordingly the Supreme Court finds that neither violation of substantive law nor an erroneous or incomplete determination of the facts has been made. The Supreme Court finds the appeal as unfounded.
24. 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.

### **Legal Advice**

25. 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*

*Esma Erterzi, EULEX Judge*

*Willem Brouwer, EULEX Judge*

*Urs Nufer, EULEX Registrar*