

**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-276/13

Prishtinë/Prishtina

9 June 2015

In the proceedings of:

O. A.

Mitrovicë/Mitrovica

Appellant

vs.

N/A

The KPA Appeals Panel of the Supreme Court of Kosovo composed of Sylejman Nuredini Presiding Judge, Willem Brouwer and Roland Bruin, Judges, on the appeal against the decision of the Kosovo Property Claims Commission KPCC/D/ R/199/2013 dated 18 April 2013 (case file registered at the KPA under No. KPA00447), after deliberation held on 9 June 2015, issues the following

JUDGMENT:

1. The appeal of O. A. against the decision of the Kosovo Property Claims Commission KPCC/D/ R/199/2013 dated 18 April 2013 (case file registered at the KPA under No KPA00447) dated 18 April 2013 is rejected as unfounded.
2. The decision of the KPCC/D/C/ R/199/2013 dated 18 April 2013 (case file registered at the KPA under No KPA00447) dated 18 April 2013, is confirmed.

Procedural and factual background:

1. On 28 February 2007 O. A. (henceforth: the Claimant) filed a claim with the Kosovo Property Agency (KPA), seeking confirmation of co-ownership right over the property situated in Mitrovicë/Mitrovica. The Claimant did not specify the parcel number of the claimed property but it follows from the documents that were submitted and the research made by the KPA, that the property is a part of parcel no 19 in Cadastral Zone of Mitrovicë/Mitrovica. The main part of the property is used by "Sveti Sava" basic school. The disputed part of the property is residential, house with a surface of 71 m² and yard with a total surface of the 00.04.05 ha. The Claimant stated that the possession over the property was lost on 13 May 1999 due to the armed conflict in 1998/1999 and it is illegally usurped by "Sveti Sava" basic school. Furthermore, the Claimant confirmed that he has filed a lawsuit before the Municipal Court of Mitrovicë/Mitrovica regarding the same matter.
2. With the claim A. submitted *inter alia*:
 - The Judgement GZ.138/2006 dated 9 November 2007 issued by the District Court of Mitrovicë/Mitrovica through which it was established that the Claimant and his

sister are co-owners over the claimed property on $\frac{1}{2}$ equal part as the inheritors of their late father, A. A., hence, the Municipality of Mitrovicë/Mitrovica is obliged to recognize the right of the co-owners and allow the registration into the cadastral books. In the reasoning of the Judgment is mentioned that in the year 1960 the Claimants late father obtained the claimed property as a gift from the former owner K. M.; and that he built the house and lived in the same with his family until 1999 when the claimed house was burnt due to the armed conflict; and that the family was displaced in Novi Pazar. On the property on which previously the house had been located, a gymnasium was built. (The lawsuit in which the said judgment was issued had been filed before Municipal Court of Mitrovica in 2004).

- Cadastral Decision 516/2010 dated 4 May 2012 issued by Cadastral Municipality of Mitrovicë/Mitrovica through which the request of the Claimant regarding the division and registration of the co-ownership right over the claimed property was approved and the Claimant is registered as co-owner in the Register of the Immovable Properties according to the enacting clause of the Judgment C.No.463/2004 and the Judgment GZ.138/2006.
3. The Executive Secretariat of the KPA established that the claimant had filed a claim for the same property before the Housing and Property Claims Commission (HPCC) by seeking repossession.
 4. By its cover decision HPCC/D/163/2004/C issued on 9 December 2004, the Housing and Property Claims Commission issued the order of repossession. Paragraph 6 of the Cover Decision specifies that the order only resolves the issue of entitlement to the declaratory relief granted. It does not finally decide any other legal right, issue or dispute relating to the claimed property.
 5. On 11 May 2011, the KPA Notification Team went to the property and put up a sign notifying the claim. In its notification report, the KPA Team noted that the property was garden and a part of the sports hall which was occupied by Primary School "Sveti Sava". The Director of the school did not accept to be part of the KPA proceedings. Since no notice of participation was filed the claim remained uncontested.

6. According to the KPA verification report, dated 1 February 2013, the property was found registered in the name of Claimant as co-owner of ½ ideal parts. The Directory for Geodesy, Cadastre and Property of the Municipality of Mitrovicë/Mitrovica, through its written response no 15-031-971/13 dated 24 January 2013, confirmed that parcel no 19 was registered under the name of Municipal Assembly until year 2012, whereas based on the judgment GZ.138/06, dated 09.11.2007 the parcel was divided and new parcels were established as parcel no 19/1, which is still registered under the Municipality. and the cadastral parcel no 19/2 which was registered under the name of O. A. and E. Š.
7. On 18 April 2013, the Kosovo Property Claims Commission (KPCC) with its decision KPCC/D/R/2013, referred to the previous adjudication of HPCC and dismissed the claim because of *res judicata* stating that the Executive Secretariat of the KPA has in its possession substantial evidence either submitted by the Claimant or obtained *ex officio* that the claim had previously been considered and decided in a final administrative or juridical decision.
8. On 12 August 2013, the Decision was served on O.A. He filed an appeal before the Supreme Court on 3 September 2013 (henceforth: the appellant).

Allegations of appellant

9. The appellant alleged that he is living in a difficult social and financial conditions in a rented house, thus, he asks Supreme Court to build a house for him and his family. With the appeal A. gives a detailed presentation of the documents that he has submitted in order to confirm his co-ownership right.

Legal reasoning

Admissibility of the appeal

10.The appeal is admissible. It has been filed within the period of 30 days prescribed in Section 12.1 of the Law No. 03/L-079.

Merits of the appeal

11.Following the review of the case file and appellants allegations, pursuant to provisions of Article 194 of LCP, the Supreme Court found that the appeal is unfounded.

12.In the present case, from the case file it is established that the appellant before the Housing and Property Claims Commission (HPCC) sought for repossession over the house which was destroyed during the armed conflict. HPCC by its Cover Decision HPCC/D/163/2004/C issued the order of repossession by specifying that the order only resolves the issue of entitlement to the declaratory relief granted; however it did not finally decide any other legal right, issue or dispute relating to the claimed property. Issues of *res judicata* may arise in relation to HPCC previous decisions where the HPCC had previously determined the property ownership right in a claim and only apply in relation to the same, or substantially same, set of facts. This is not the case here as for the said decision of the HPCC. Unlike the KPCC, the Supreme Court does not rely on the previous decision of the HPCC in regard to the merits of the current ownership claim.

13.However, the appellant, while filing the claim before the KPA pointed out that he already filed the lawsuit before the Municipal Court in Mitrovicë/a was finalized with the District Court judgment in regard to the same subject matter. He presented the Judgement GZ.138/2006 dated 9 November 2007 issued by the District Court of Mitrovicë/a already adjudicating the same matter on the merits. More importantly, the appellant had his co-ownership right (½ ideal parts) over the parcel no 19 registered in the cadastre with the division of the said parcel into two parts as parcels no 19/1 and 19/2. The said judgment was executed and the necessary changes in the cadastre as to the ownership were already been carried out. The parcel no 19/2 is currently registered under the name of the Claimant as per the said final judgment.

14. According to Art. 11.4 (c) of the Law No. 03/L-079 the KPCC shall dismiss the claim where the claim previously has been considered and decided in a final judicial decision. Hence, the Supreme Court notes that the claim is to be dismissed as a matter of *res judicata* not because of the HPCC decision as KPCC put it, but because of the Judgement GZ.138/2006 dated 9 November 2007 issued by the District Court of Mitrovicë/ which has already been executed (see paragraphs 6 and 13 above).

15. Therefore, the appealed decision neither contains any essential violations nor any erroneous applications of material and procedural law.

16. In regard of Appellant's request to be built a house for him the KPA Appeals Panel of the Supreme Court has no jurisdiction over such request. Accordingly this claim is dismissed.

17. On the basis of the reasoning and according to the provision of section 13 paragraph 3 of the Law No. 03/L-079, it has been decided as in the enacting clause of this judgment

Legal Advice

18. Pursuant to Section 13.6 of 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

Rolandus Bruin, EULEX Judge

Urs Nufer, EULEX Registrar